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TITLE 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation

PART 418—WHEAT CROP INSURANCE

PART 420—MULTIPLE CROP INSURANCE ACTION TAKEN WITH RESPECT TO DURUM WHEAT

The Board of Directors of the Federal Crop Insurance Corporation, with the approval of the Secretary of Agriculture, by resolutions adopted at its Board meetings of November 9, 1954, and December 7, 1954—

(1) Declared, effective with the 1955 crop year, durum wheat other than red durum wheat non-insurable in all multiple crop insurance counties in North Dakota, South Dakota, and Minnesota, except Pierce, Steele, and Grand Forks Counties, North Dakota, and in all wheat insurance counties with a December 31 cancellation date except Benson, Bottineau, Cavalier, Eddy, Foster, Griggs, McHenry, Nelson, Ramsey, Rolette, Towner, Walsh, and Wells Counties, North Dakota;

(2) Directed that no further applications for insurance to be effective for the 1955 crop year be accepted in the North Dakota counties designated by name above;

(3) Provided that the acceptance of applications for insurance effective with the 1955 crop year be discontinued in North Dakota counties not designated by name above upon the Manager of the Corporation determining such action to be in the best interest of the Corporation but not later than upon his determining that the potential liability assumed by the Corporation in the State for the 1955 crop year will probably be equal to or in excess of the potential liability carried by the Corporation during the 1954 crop year;

(4) Directed the Manager to make such increases in premium rates, based on the insurance risk involved, as he deems necessary and practical in all multiple crop insurance counties in North Dakota, South Dakota, and Minnesota, and in wheat insurance counties with a December 31 cancellation date; and

(5) Directed the Manager of the Corporation to notify insureds affected, under the provisions of the applicable regulations, of the changes in their contracts made necessary by the adoption of the resolutions.

The resolutions were adopted after the Board determined that the action taken was necessary because of the insurance risk in the area affected and are based on authority contained in the Federal Crop Insurance Act, as amended (7 U. S. C. 1501-1519).

(Secs. 506, 516, 52 Stat. 73, as amended, 77; 77 U. S. C. 1506, 1516)

[SEAL]

C. S. LAIDLAW,
Secretary,

Federal Crop Insurance Corporation.

[F. R. Doc. 54-9775; Filed, Dec. 10, 1954;
8:45 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 38]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.338 *Navel Orange Regulation 38—(a) Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 19 F. R. 2941), regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as herein-after provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the pub-

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lic interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions of this section effective as hereinafter set forth. The Navel Orange Administrative Committee held an open meeting on December 9, 1954, after giving due notice thereof, to

consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date of this section.

(b) *Order.* (1) The quantity of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., December 12, 1954, and ending at 12:01 a. m., P. s. t., December 19, 1954, is hereby fixed as follows:

- (i) District 1: 323,400 boxes;
- (ii) District 2: 24,822 boxes;
- (iii) District 3: 41,580 boxes;
- (iv) District 4: Unlimited movement.

(2) Navel oranges handled pursuant to the provisions of this section shall be subject to any size restrictions applicable thereto which have heretofore been issued on the handling of such oranges and which are effective during the period specified herein.

(3) As used in this section, "handled," "boxes," "District 1," "District 2," "District 3," and "District 4" shall have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 10, 1954.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F. R. Doc. 54-9872; Filed, Dec. 10, 1954;
11:47 a. m.]

[Lemon Reg. 567]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATIONS OF SHIPMENTS

§ 953.674 *Lemon Regulation 567—*
(a) *Findings.* (1) Pursuant to the mar-
keting agreement, as amended, and
Order No. 53, as amended (7 CFR Part
953; 19 F. R. 7175), regulating the
handling of lemons grown in the State
of California or in the State of Arizona,
effective under the applicable provisions
of the Agricultural Marketing Agreement
Act of 1937, as amended (7 U. S. C. 601
et seq.), and upon the basis of the
recommendation and information sub-
mitted by the Lemon Administrative
Committee, established under the said

amended marketing agreement and
order, and upon other available infor-
mation, it is hereby found that the
limitation of the quantity of such lemons
which may be handled, as hereinafter
provided, will tend to effectuate the
declared policy of the act.

(2) It is hereby further found that it
is impracticable and contrary to the
public interest to give preliminary notice,
engage in public rule-making procedure,
and postpone the effective date of this
section until 30 days after publication
thereof in the FEDERAL REGISTER (60 Stat.
237; 5 U. S. C. 1001 et seq.) because the
time intervening between the date when
information upon which this section is
based became available and the time
when this section must become effective
in order to effectuate the declared policy
of the act is insufficient, and a reasonable
time is permitted, under the circum-
stances, for preparation for such effective
time; and good cause exists for
making the provisions hereof effective as
hereinafter set forth. Shipments of
lemons, grown in the State of California
or in the State of Arizona, are currently
subject to regulation pursuant to said
amended marketing agreement and
order; the recommendation and support-
ing information for regulation during
the period specified herein was promptly
submitted to the Department after an
open meeting of the Lemon Administra-
tive Committee on December 8, 1954,
such meeting was held, after giving due
notice thereof to consider recommenda-
tions for regulation, and interested per-
sons were afforded an opportunity to
submit their views at this meeting; the
provisions of this section, including its
effective time, are identical with the
aforesaid recommendation of the com-
mittee, and information concerning such
provisions and effective time has been
disseminated among handlers of such
lemons; it is necessary, in order to ef-
fectuate the declared policy of the act,
to make this section effective during the
period hereinafter specified; and com-
pliance with this section will not require
any special preparation on the part of
persons subject thereto which cannot be
completed by the effective time thereof.

(b) *Order.* (1) The quantity of lemons
grown in the State of California
or in the State of Arizona which may be
handled during the period beginning at
12:01 a. m., P. s. t., December 12, 1954,
and ending at 12:01 a. m., P. s. t., Decem-
ber 19, 1954, is hereby fixed as follows:

- (i) District 1: 45 carloads;
- (ii) District 2: 167 carloads;
- (iii) District 3: 13 carloads.

(2) As used in this section, "han-
dled," "carloads," "District 1," "District
2," and "District 3" shall have the same
meaning as when used in the said amend-
ed marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C.
608c)

Dated: December 9, 1954.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F. R. Doc. 54-9849; Filed, Dec. 10, 1954;
8:58 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 53690]

PART 5—CUSTOMS RELATIONS WITH CONTIGUOUS FOREIGN TERRITORY

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

IN-TRANSIT SHIPMENTS AND IN-TRANSIT SEALS

The customs regulations were
amended by T. D. 53057, approved July
24, 1952 (17 F. R. 7042), to implement the
plan agreed to by the Customs Services
of Canada and the United States for the
joint usage by the two Services on car-
load shipments of merchandise moving
between ports of one country via terri-
tory of the other of customs seals applied
in the country of departure without fur-
ther sealing of the cars with customs
seals in the country through which they
are transported in bond. It was pointed
out that the adoption of the plan would
serve to reduce the work of railroad car-
riers engaged in the transportation of
such shipments and facilitate the move-
ment of the shipments.

With the concurrence of the Customs
Service of Canada, it is now deemed ad-
vantageous to extend the use of common
seals by the two Services to truckload
shipments of merchandise moving be-
tween ports of one country via territory
of the other. Accordingly, the customs
regulations are hereby amended as
follows:

1. Section 5.8 (g) is amended by sub-
stituting "sealable carload or truckload
shipments" for "carload shipments" and
adding "or trucks" after "cars" in the
first sentence.

(R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C.
66, 1624. Interprets or applies sec. 554, 46
Stat. 743; 19 U. S. C. 1554)

2. Section 5.11 is amended as follows:

a. The first sentence of paragraph (a)
is amended by substituting "whether in
load or less-than-load lots, arrives at
a frontier port from Mexico and when-
ever merchandise arrives at a frontier
port from Canada by vessel or in less
than carload or truckload lots" for
"whether in carload or less-than-carload
lots, arrives at a frontier port from Mex-
ico and whenever merchandise arrives
at a frontier port from Canada by ves-
sel or in less-than-carload lots".

b. The first two sentences of para-
graph (b) are amended to read: "When
sealable carload or truckload shipments
of merchandise arrive at Canadian fron-
tier ports for in-transit movement
through the United States in bond and
return to Canada, bright green in-
transit seals will be placed on the cars
or trucks and the sealing thereof verified
by Canadian customs officers before the
cars or trucks depart from Canada. No
other in-transit seals shall be required
to be placed on such cars or trucks be-
fore their movement in bond through
the United States provided the seals
placed on the cars or trucks in Canada
are found to be locked and properly
attached."

(R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624. Interprets or applies sec. 553, 46 Stat. 742; 19 U. S. C. 1553)

3. Section 24.13 is amended as follows:
a. Paragraph (b) is amended to read as follows:

(b) In-bond seals used for sealing imported merchandise shipped between ports in the United States shall be colored red and stamped "U. S. Customs In Bond," except that bright green seals shall be used to seal carload or truckload shipments of merchandise moving in transit between Canadian ports through the United States in bond as provided for by § 5.11 (b) of this chapter. Such green seals used on railroad cars shall be stamped [Can. Customs U. S. Transit] and those used on trucks shall be stamped [H. W. Can. Customs U. S. Transit]. In-transit seals used for sealing merchandise shipped from one port in the United States through foreign territory or waters to another port in the United States shall be colored blue and stamped "U. S. Customs In Transit," except that in-transit seals used on carload or truckload shipments of merchandise moving in transit between United States ports via Canada shall be colored yellow. Such yellow seals used on railroad cars shall be stamped [U. S. Customs Can. Transit] and those used on trucks stamped [H. W. U. S. Customs Can. Transit]. Seals used for sealing merchandise for customs purposes other than for (1) shipping in bond, (2) shipping by other than a bonded common carrier in accordance with section 553, Tariff Act of 1930, as amended, or (3) shipping in-transit shall be uncolored and stamped "U. S. Customs." All seals (except green in-transit seals for use on trucks) shall be stamped with the name of the port for which they are ordered. Each Tyden seal shall be stamped with a serial number, and each automatic metal seal shall be stamped with a symbol number. These numbers will be assigned by the collector of customs when the orders therefor are approved.

b. Paragraph (c) is amended by adding "for use on railroad cars" after "Tyden in-bond seals" in the last sentence.

(R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624)

The new procedure herein authorized relating to the use of green Tyden in-transit seals on trucks shall be effective as soon as the seals are available for use. The new procedure herein authorized relating to the use of yellow Tyden in-transit seals on trucks shall be effective at the earliest practicable date, the effective date to be determined locally. In fixing such date, the local collector shall give consideration to carriers' stocks of unused blue Tyden in-transit customs

seals as well as to the date of delivery of the new yellow Tyden in-transit seals.

[SEAL]

RALPH KELLY,
Commissioner of Customs.

Approved: December 6, 1954.

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 54-9809; Filed, Dec. 10, 1954;
8:52 a. m.]

[T. D. 53688]

PART 8—LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE

INVOICES; COAL-TAR COLORS, DYES, STAINS, COLOR ACIDS, COLOR BASES, COLOR LAKES, LEUCO AND INDOXYL COMPOUNDS

T. D. 53593 requires that certain specified information be placed on invoices covering importations of any coal-tar color, dye, stain, color acid, color base, color lake, leuco compound, indoxyl, or indoxyl compound.

Representations have been made that some importers prefer to submit color cards of an entire line or group of dyes prior to importation. It has been determined that the purpose of a color pattern or card will be served if the pattern or card is submitted before importation and identified for each subsequent shipment of a product which it represents by an appropriate reference on the customs invoice covering the product. It has also been pointed out that in the case of certain products, such as food colors and dyes used to color gasoline or smoke signals, color cards are not used commercially and are not feasible to prepare and submit to customs officers.

1. Accordingly, T. D. 53593 is amended by revising paragraph 15 of Schedule A therein to read as follows:

15. In addition to the above specifications, there shall be furnished with the invoice a color pattern or card showing typical small specimens of the material to which the imported product has been applied with an indication of the strength and the method of application. However, in those cases where a suitable color card has been filed previously with the New York Customs Laboratory, or where a color card is not used commercially and it is not practical to submit one, it will be considered satisfactory to furnish a statement setting forth the date the previous pattern or card was filed and its identification number, or the reason why one is not submitted.

2. The paragraph of T. D. 53593 following Schedule A is amended by adding

Article	Duty assessment
Bits, rock (oil well drilling).....	58 cents each.
Drums, metal (when not exempt from duty in accordance with sec. 10.3 (c)).	24 cents each.
Hosiery, nylon.....	45 cents per dozen.
Lead compound, tetraethyl.....	\$0.006 per pound.
Lithopone.....	\$0.00143 per pound.
Oxide, zinc.....	\$0.0065 per pound.
Piece goods, cotton:	
Bleached.....	\$0.02675 per square yard.
Dyed.....	\$0.02888 per square yard.
Printed.....	\$0.02097 per square yard.
Piece goods, nylon: Dyed.....	\$0.24320 per square yard.
Piece goods, rayon:	
Printed.....	\$0.04070 per square yard.
Other than printed (white, piece dyed or yarn dyed).....	\$0.07089 per square yard.
Tallow, refined, inedible.....	\$0.007 per pound.

at the end thereof a new sentence to read as follows: "The color card need not be furnished with the entry in the excepted cases provided for in the last sentence of paragraph 15, Schedule A, as amended."

3. Section 8.13 (h) of the customs regulations is hereby amended by adding a comma and the number of this Treasury decision in the column entitled "Treasury decisions" opposite "Dyes, colors, stains, color acids, color bases, color lakes, leuco-compounds, indoxyl, and indoxyl compounds," in the column entitled "Merchandise".

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies par. 28 (f), secs. 1, 481, 484, 46 Stat. 595, as amended, 719, 722, as amended; 19 U. S. C. par. 28 (f) 1001, 1481, 1484)

[SEAL]

RALPH KELLY,
Commissioner of Customs.

Approved: December 6, 1954.

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 54-9807; Filed, Dec. 10, 1954;
8:52 a. m.]

[T. D. 53687]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

AMERICAN GOODS RETURNED

In order to implement the provisions of paragraph 1615 (f), Tariff Act of 1930, as amended by section 7, Customs Simplification Act of 1953, the customs regulations are hereby amended as follows:
Section 10.3 is amended as follows:

1. Paragraph (a) is amended by substituting "paragraph (c)" for "paragraph (b)" and inserting "as amended," following "Tariff Act of 1930," in the first sentence; and by inserting "(see paragraph (b) of this section)" following "date of importation of the returned article" in the second sentence.

2. Paragraphs (b), (c) and (d) are redesignated paragraphs (c), (d) and (e), respectively, and a new paragraph (b) is inserted reading as follows:

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles:

3. Paragraph (c) (3), as redesignated herein, is amended by substituting "collector of customs" for "Commissioner of Customs".

4. Section 10.7 (a) is amended by deleting the last sentence.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interpret or apply par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1201, par. 1615)

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: December 6, 1954.

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 54-9806; Filed, Dec. 10, 1954;
8:52 a. m.]

[T. D. 53689]

PART 14—APPRAISEMENT

COAL-TAR PRODUCTS

Section 14.5 (n) of the customs regulations provides that domestic manufacturers may submit to the Chief Chemist, Customs Laboratory, 201 Varick Street, New York, samples of those coal-tar products they produce and offer and which are more specifically described as a coal-tar color, dye, stain, color acid, color base, color lake, leuco-compound, or indoxyl or indoxyl compound. It requires that each sample so received shall be accompanied by specifications setting forth all the information called for in Schedule A.

Representations have been made that some manufacturers prefer to submit

color cards of an entire line or group of dyes. It has also been pointed out that in the case of certain products, such as food colors and dyes used to color gasoline or smoke signals, color cards are not used commercially and are not feasible to prepare and submit to customs officers. It has been determined that the purpose of a color pattern or card will be served if the pattern or card is submitted prior to the receipt of the sample and identified by an appropriate reference on the data accompanying the sample.

Accordingly, § 14.5 (n) is amended by revising paragraph 15 of Schedule A therein to read as follows:

15. In addition to the above specifications, there shall be furnished a color pattern or card showing typical small specimens of the material to which the product has been applied with an indication of the strength and the method of application. However, in those cases where a suitable color card has been filed previously with the New York Customs Laboratory, or where a color card is not used commercially and it is not practical to submit one, it will be considered satisfactory to furnish a statement setting forth the date the previous pattern or card was filed and its identification number, or the reason why one is not submitted.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies sec. 402, 46 Stat. 708, as amended, (pars. 27, 28), sec. 1, 46 Stat. 592, 594, as amended; 19 U. S. C. 1402, 1001, pars. 27, 28)

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: December 6, 1954.

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 54-9808; Filed, Dec. 10, 1954;
8:52 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

REGULATIONS UNDER SUBCHAPTER C, PART I TO IV, INCLUSIVE, AND PART VI, OF THE INTERNAL REVENUE CODE OF 1954; NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (P. L. 591,

83d Congress, approved August 16, 1954; 26 U. S. C. 7805).

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

In order to provide regulations under Subchapter C, Part I, to IV, inclusive, and Part VI, of the Internal Revenue Code of 1954, the following regulations are hereby prescribed:

The following regulations are applicable in connection with the provisions of subchapter C—Corporate Distributions and Adjustments, sections 301 through 395.

PART I. *Distributions by corporations.* The following rules are to be applied in connection with the provisions of Part I, sections 301 through 318. For rules relating to the effective date of this part and to the application of the rules of this part to years subject to the Internal Revenue Code of 1939, see Part VI.

CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

DISTRIBUTIONS BY CORPORATIONS

Effects on Recipients

§ 1.301 *Statutory provisions; distributions by corporations; distributions of property.*

Sec. 301. *Distributions of property*—(a) *In general.* Except as otherwise provided in this chapter, a distribution of property (as defined in section 317 (a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) *Amount distributed*—(1) *General rule.* For purposes of this section, the amount of any distribution shall be—

(A) *Noncorporate distributees.* If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

(B) *Corporate distributees.* If the shareholder is a corporation, the amount of money received, plus whichever of the following is the lesser:

(i) The fair market value of the other property received; or

(ii) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under subsection (b) or (c) of section 311.

(2) *Reduction for liabilities.* The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) The amount of any liability of the corporation assumed by the shareholder in connection with the distribution; and

(B) The amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) *Determination of fair market value.* For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) *Amount taxable.* In the case of a distribution to which subsection (a) applies—

(1) *Amount constituting dividend.* That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) *Amount applied against basis.* That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) *Amount in excess of basis*—(A) *In general.* Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) *Distributions out of increase in value accrued before March 1, 1913.* That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) *Basis.* The basis of property received in a distribution to which subsection (a) applies shall be—

(1) *Noncorporate distributees.* If the shareholder is not a corporation, the fair market value of such property.

(2) *Corporate distributees.* If the shareholder is a corporation, whichever of the following is the lesser:

(A) The fair market value of such property; or

(B) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under subsection (b) or (c) of section 311.

(e) *Exception for certain distributions by personal service corporations.* Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section

218 of the Revenue Act of 1918 (40 Stat. 1070), or section 218 of the Revenue Act of 1921 (42 Stat. 245), shall be exempt from tax to the distributees.

(f) *Special rules.* (1) For distributions in redemption of stock, see section 302.

(2) For distributions in partial or complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For partial exclusion from gross income of dividends received by individuals, see section 116.

§ 1.301-1 *Rules applicable with respect to distributions of money and property.* (a) Except as otherwise provided in this chapter, a distribution on or after June 22, 1954, of property (as defined in section 317 (a)) by a corporation to a shareholder with respect to its stock shall be included in gross income to the extent the amount distributed is considered a dividend under section 316. For examples of distributions treated otherwise, see sections 116, 301 (c) (3) (b), 301 (e), 302 (b), 303, and 305, and Part II (relating to distributions in partial or complete liquidation), Part III (relating to corporate organizations and reorganizations), and Part IV (relating to insolvency reorganizations) of this subchapter.

(b) A distribution made by a corporation to its shareholders shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands. However, if such distribution is a distribution other than in cash, the amount thereof shall be determined by reference to the fair market value of such property on the date of distribution without regard to whether such date is the same as that on which such amount is includible in gross income.

(c) Section 301 is not applicable to an amount paid by a corporation to a shareholder unless such amount is paid to such shareholder in his capacity as such.

(d) If property other than money and other than the obligations or stock of the distributing corporation is distributed in kind to a shareholder which is a corporation and the fair market value of such property is greater than the adjusted basis in the hands of the distributing corporation, only the adjusted basis of such property (determined immediately before the distribution and adjusted under section 311 (b) and (c) for any gain recognized to the distributing corporation) shall be taken into account for purposes of section 301. Thus, in such a case, the amount of such a dividend in kind under section 301 (c) (1) may not exceed such adjusted basis. Similarly, in cases where the distribution is not out of earnings and profits, the amount of the reduction in basis of the shareholder's stock and the amount of any gain resulting from such distribution is determined by reference to the adjusted basis of the property distributed. If the property distributed is money, the amount of the distribution shall be the amount of such money. If the property distributed consists of the obligations of the distributing corporation, or stock of the

distributing corporation treated as property under section 305 (b), the amount of such distribution shall be an amount equal to the fair market value of such obligations or such stock. For special rule as to distributions of property received by a domestic corporation from a foreign corporation, see section 902 (d).

(e) In determining the adjusted basis of property distributed in the hands of the distributing corporation immediately before the distribution for purposes of section 301 (b) (1) (B) (ii) and (d) (2) (B), the basis to be used shall be the basis for determining gain upon a sale or exchange.

(f) The application of section 301 may be illustrated by the following examples:

Example (1). On January 1, 1955, A, an individual owned stock of Corporation M with an adjusted basis of \$2,000. During 1955, A received distributions from Corporation M totaling \$30,000, consisting of \$10,000 in cash and listed securities having a basis in the hands of Corporation M and a fair market value on the date distributed of \$20,000. As of December 31, 1955, Corporation M had earnings and profits accumulated after February 28, 1913, in the amount of \$26,000. Of the \$30,000 received by A, \$26,000 will be treated as an ordinary dividend; the remaining \$4,000 will be applied against the adjusted basis of his stock; the \$2,000 in excess of the adjusted basis of his stock will either be treated as gain from the sale or exchange of property (under section 301 (c) (3) (A)), or, if out of increase in value accrued before March 1, 1913, will (under section 301 (c) (3) (B)) be exempt from tax. If A subsequently sells his stock in Corporation M, the basis for determining gain or loss on the sale will be zero.

Example (2). The facts are the same as in Example 1 except that the shareholder of Corporation M is Corporation W and with the additional fact that the securities which were distributed had an adjusted basis to Corporation M of \$15,000. The distribution received by Corporation W totals \$25,000 consisting of \$10,000 in cash and securities with an adjusted basis of \$15,000. The total \$25,000 would be treated as a dividend to Corporation W since the earnings and profits of Corporation M (\$26,000) are in excess of the amount of the distribution.

Example (3). Corporation X owns timber land which it acquired prior to March 1, 1913, at a cost of \$50,000 with \$5,000 allocated as the separate cost of the land. On March 1, 1913, this property had a fair market value of \$150,000 of which \$135,000 was attributable to the timber and \$15,000 to the land. All of the timber was cut prior to 1955 and the full appreciation in the value thereof, \$90,000 (\$135,000 - \$45,000), realized through depletion allowances based on March 1, 1913, value. None of this surplus from realized appreciation had been distributed. In 1955, Corporation X sold the land for \$20,000 thereby realizing a taxable gain of \$5,000. Corporation X also realized appreciation of \$10,000 (\$15,000 - \$5,000). Therefore at December 31, 1955, Corporation X had a surplus from realized appreciation in the amount of \$100,000. It had no accumulated earnings and profits and no deficit at January 1, 1955. The net earnings for 1955 (including the \$5,000 gain on the sale of the land) were \$20,000. During 1955, Corporation X distributed \$75,000 to its stockholders. Of this amount, \$20,000 shall be treated as a dividend. The remaining \$55,000, which is a distribution of realized appreciation, shall be applied against and reduce the adjusted basis of the shareholders' stock. If any part of the \$55,000 is in excess of the adjusted

basis of a shareholder's stock, such part shall be exempt from tax.

(g) For the purpose of section 301 (a), the amount of any distribution shall be reduced by—

(1) The amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(2) The amount of any liability to which the property received by the shareholder is subject immediately before and immediately after the distribution.

Such reduction, however, shall not cause the amount of the distribution to be reduced below zero.

(h) The basis of property received in the distribution to which section 301 applies shall be—

(1) If the shareholder is not a corporation, the fair market value of such property;

(2) If the shareholder is a corporation, the fair market value of the obligations of the distributing corporation and of its stock (if such stock is treated as property under section 305 (b)) received in such distribution and with respect to any other property received, whichever of the following is the lesser—

(i) The fair market value of such property; or

(ii) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property increased in the amount of gain to the distributing corporation which is recognized under section 311 (b) (relating to distributions of LIFO inventory) or under section 311 (c) (relating to distributions of property subject to liabilities in excess of basis).

(j) If property is transferred by a corporation to a shareholder, for an amount less than its fair market value in a sale or exchange, such shareholder shall be treated as having received a distribution to which section 301 applies. In the case of a shareholder who is an individual, the amount of the distribution shall be the difference between the amount paid for the property and its fair market value. In the case of a shareholder which is a corporation, the amount of the distribution, where the fair market value of the property equals or exceeds its basis in the hands of the distributing corporation, shall be that portion of such basis which is allocable to the difference between the amount paid for the property and its fair market value. In the case of a shareholder which is a corporation, the amount of the distribution, where the basis of the property in the hands of the distributing corporation exceeds its fair market value, shall be the excess of such value over the amount paid for the property. In all cases the earnings and profits of the distributing corporation shall be decreased by that portion of the basis of the property in the hands of the distributing corporation properly allocable to the amount of the distribution. In computing gain or loss from the subsequent sale of such property its basis shall be the amount paid for the property,

increased by the amount of the distribution.

(k) The application of (j) of this section may be illustrated by the following example:

Example. On January 1, 1955, A, an individual shareholder of Corporation X, purchased property from that Corporation for \$40. The fair market value of such property in the hands of Corporation X was \$100. Its basis was \$25.00. The amount of the distribution determined under section 301 (b) is \$60.00. If A were a corporation, the amount of the distribution would be \$15.00, determined by allocating the basis of the property in the hands of the corporation (\$25.00) three-fifths to the part of the property distributed and two-fifths to the part of the property purchased. The earnings and profits of Corporation X shall be decreased by \$15.00.

(l) For certain rules relating to adjustments to earnings and profits and for determining the extent to which a distribution is a dividend, see sections 312 and 316 and regulations thereunder.

§ 1.302 Statutory provisions; distributions in redemption of stock.

Sec. 302. Distributions in redemption of stock—(a) General rule. If a corporation redeems its stock (within the meaning of section 317 (b)), and if paragraph (1), (2), (3), or (4) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) *Redemptions treated as exchanges—*(1) *Redemptions not equivalent to dividends.* Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) *Substantially disproportionate redemption of stock—(A) In general.* Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) *Limitation.* This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) *Definitions.* For purposes of this paragraph, the distribution is substantially disproportionate if—

(i) The ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time, is less than 80 percent of—

(ii) The ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) *Series of redemptions.* This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) *Termination of shareholder's interest.* Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) *Stock issued by railroad corporations in certain reorganizations.* Subsection (a)

shall apply if the redemption is of stock issued by a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act, as amended) pursuant to a plan of reorganization under section 77 of the Bankruptcy Act.

(5) *Application of paragraphs.* In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of subsection (c) (2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the 10-year period beginning on the date of the distribution shall not apply.

(c) *Constructive ownership of stock—(1) In general.* Except as provided in paragraph (2) of this subsection, section 318 (a) shall apply in determining the ownership of stock for purposes of this section.

(2) *For determining termination of interest.* (A) In the case of a distribution described in subsection (b) (3), section 318 (a) (1) shall not apply if—

(i) Immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) The distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) The distributee, at such time and in such manner as the Secretary or his delegate by regulations prescribes, files an agreement to notify the Secretary or his delegate of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary or his delegate) notifies the Secretary or his delegate of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if—

(i) Any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318 (a), or

(ii) Any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318 (a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(d) *Redemptions treated as distributions of property.* Except as otherwise provided

in this subchapter, if a corporation redeems its stock (within the meaning of section 317 (b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) *Cross references.* For special rules relating to redemption—

(1) *Death taxes.* Of stock to pay death taxes, see section 303.

(2) *Section 306 stock.* Of section 306 stock, see section 306.

(3) *Liquidations.* Of stock in partial or complete liquidation, see section 331.

§ 1.302-1 *General.* A distribution in redemption of stock shall be considered a distribution in part or full payment in exchange for the stock provided paragraphs (1), (2), (3), or (4) of section 302 (b) applies. This section is not applicable to distributions in complete liquidation of a corporation nor to that portion of any distribution which qualifies as a distribution in partial liquidation under section 346. If a corporation makes a distribution which qualifies as a distribution in partial liquidation and at the same time redeems additional stock (such redemption not meeting the requirements of section 346), section 302 shall apply to that portion of the distribution which does not qualify under section 346. To the extent that a distribution qualifies under both sections 302 and 346, only section 346 shall be applicable and none of the limitations of section 302 shall apply. Section 318 (a) (relating to constructive ownership of stock) applies to all redemptions under section 302 except that in the termination of a shareholder's interest, certain limitations are placed on the application of section 318 (a) by section 302 (c) (2).

§ 1.302-2 *Redemptions not taxable as dividends.* (a) If a distribution is determined to be not essentially equivalent to a dividend, it is immaterial that it does not meet the requirements of paragraphs (2), (3) or (4) of section 302 (b). The determination of whether or not a distribution is essentially equivalent to a dividend shall be made without regard to the earnings and profits of the corporation at the time of the distribution. For example, if A owns all the stock of a corporation and the corporation redeems part of his stock at a time when it has no earnings and profits, the distribution shall be treated as a distribution under section 301.

(b) All distributions in pro rata redemption of a part of the stock of a corporation will ordinarily be treated as distributions under section 301 if the corporation has only one class of stock outstanding. However, for distributions in partial liquidation, see section 346. The redemption of all of one class of stock (except section 306 stock), either at one time or in a series of redemptions, will ordinarily be considered a distribution under section 301 if all classes of stock outstanding at the time of the redemption are held in the same proportion. This rule shall apply regardless of the provisions of the stock certificate and regardless of whether all stock being redeemed was acquired by the stockholders from whom the stock was redeemed by purchase or otherwise. In all other

cases (except those described in section 302 (b) (2), (3), and (4)), the question whether a distribution is essentially equivalent to a dividend depends upon the circumstances of each case. In such cases, the facts and circumstances should be reported to the Commissioner for his determination. Except as otherwise provided in section 302 (c) (2) (relating to the determination of ownership of stock), the provisions of section 318 (a) (relating to constructive ownership) are applicable.

(c) In any case in which an amount received in redemption of stock is treated as a distribution of a dividend, proper adjustment of the basis of the remaining stock will be made with respect to the stock redeemed. The following examples illustrate the application of this rule:

Example (1). A, an individual, purchased all of the stock of Corporation X for \$100,000. In 1955 the corporation redeems half of the stock for \$150,000, and it is determined that this amount constitutes a dividend. The remaining stock of Corporation X held by A has a basis of \$100,000.

Example (2). H and W, husband and wife, each own half of the stock of Corporation X. All of the stock was purchased by H for \$100,000 cash. In 1950 H gave one-half of the stock to W. In 1955 all of the stock of H is redeemed for \$150,000, and it is determined that the distribution to H in redemption of his shares constitutes the distribution of a dividend. Immediately after the transaction, W holds the remaining stock of Corporation X with a cost of \$100,000.

§ 1.302-3 Substantially disproportionate redemption. (a) Section 302 (b) (2) provides for the treatment of an amount received in redemption of stock as an amount received in exchange for such stock if—

(1) Immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock as provided in section 302 (b) (2) (B),

(2) The redemption is a substantially disproportionate redemption within the meaning of section 302 (b) (2) (C), and

(3) The redemption is not pursuant to a plan described in section 302 (b) (2) (D).

Section 318 (a) (relating to constructive ownership of stock) shall apply both in making the disproportionate redemption test and in determining the percentage of stock ownership after the redemption. The requirements under section 302 (b) (2) shall be applied to each shareholder separately. Section 302 (b) (2) applies only to the redemption of voting stock or common stock, or both. However, if a redemption is treated as an exchange to a particular shareholder under the terms of section 302 (b) (2), the simultaneous redemption of nonvoting preferred stock (which is not section 306 stock) owned by such shareholder is similarly treated as an exchange. Subsection 302 (b) (2) (D) provides that a redemption will not be treated as substantially disproportionate if made pursuant to a plan the purpose or effect of which is a series of redemptions which result in the aggregate in a distribution which is not substantially disproportionate. Whether or not such a plan exists

will be determined from all the facts and circumstances.

(b) The application of paragraph (a) of this section is illustrated by the following example:

Example. Corporation M has outstanding 400 shares of common stock of which A, B, C, and D (all unrelated) each own 100 shares or 25 percent. Corporation M redeems 55 shares from A, 25 shares from B, and 20 shares from C. For the redemption to be disproportionate as to any shareholder, such shareholder must own after the redemptions less than 20 percent (80 percent of 25 percent) of the 300 shares of stock then outstanding. After the redemptions, A owns 45 shares (15 percent), B owns 75 shares (25 percent), and C owns 80 shares (26 2/3 percent). The distribution is disproportionate only with respect to A.

§ 1.302-4 Termination of shareholder's interest. Section 302 (b) (3) provides that a distribution in redemption of all of the stock of the corporation owned by a shareholder shall be treated as a distribution in part or full payment in exchange for the stock of such shareholder. In determining whether all of the stock of the shareholder has been redeemed, the general rule of section 302 (c) (1) requires that the rules of constructive ownership provided in section 318 (a) shall apply. Section 302 (c) (2), however, provides an exception to the application of section 318 (a) (1) in cases where the specific requirements of section 302 (c) (2) are met. The following rules shall be applicable with respect to the termination of interest of the shareholder as provided in section 302 (c) (2):

(a) The agreement specified in section 302 (c) (2) (A) (iii) shall (1) recite the agreement of the distributee to notify the district director of internal revenue for the district in which the return is filed for the year in which the distribution occurs, of any acquisition of an interest in the corporation within 30 days after such acquisition, and (2) be filed with the return for the year in which the distribution occurs.

(b) The distributee who files an agreement under section 302 (c) (2) (A) (iii) shall retain copies of income tax returns and any other records indicating fully the amount of tax which would have been payable had the redemption been treated as a distribution subject to section 301.

(c) If section 302 (c) (2) is applicable with reference to a redemption of stock of a parent corporation, subparagraph (A) relating to acquisition of an interest in the corporation within 10 years after termination shall be applied with reference to an interest both in the parent corporation and any subsidiary of such parent corporation. If section 302 (c) (2) is applicable to the sale of the stock of a controlled corporation (as described in section 304), subparagraph (A) shall be applicable to the acquisition of an interest in such subsidiary corporation or in the parent corporation. Such subparagraph shall also be applied with respect to an interest in a corporation which is in any way a successor corporation to the corporation the interest in which has been terminated.

(d) For the purpose of section 302 (c) (2) (A) (i), a person will be considered to be a creditor only if the rights of such person with respect to the corporation are not greater or broader in scope than otherwise necessary for the enforcement of his claim. The debt with respect to which the claim arises must constitute an obligation held by a person whose interest in the corporation is not in any sense that of a proprietor. Thus, if the corporation may discharge its obligation to a person by payments, the amount, regularity, or certainty of which are dependent upon the earnings of the corporation, such a person is not a creditor of the corporation within the meaning of section 302 (c) (2) (A) (i).

(e) In the case of a distributee to whom section 302 (b) (3) is applicable, who is a creditor after such transaction, the acquisition of the assets of the corporation in the enforcement of the rights of such creditor shall not be considered an acquisition of an interest in the corporation for purposes of section 302 (c) (2) unless stock of the corporation, its parent corporation, or, in the case of a redemption of stock of a parent corporation, of a subsidiary of such corporation is acquired.

(f) In determining whether an entire interest in the corporation has been terminated under section 302 (b) (3) the provisions of section 318 (a) (relating to constructive ownership of stock) shall be applicable unless the shareholder meets the requirements of section 302 (c) (2) (relating to termination of all interest in the corporation other than as a creditor). If the requirements of section 302 (c) (2) are met, section 318 (a) (1) (relating to constructive ownership of stock owned by members of a family) shall be inapplicable. Under all circumstances, paragraphs (2), (3), and (4) of section 318 (a) shall be applicable.

§ 1.303 Statutory provisions; distributions in redemption of stock to pay death taxes.

Sec. 303. Distributions in redemption of stock to pay death taxes.—(a) In general. A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

(1) The estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) The amount of funeral and administration expenses allowable as deductions to the estate under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States).

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) *Limitations on application of subsection (a)—(1) Period for distribution.* Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) Within the period of limitations provided in section 6501 (a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501 (a)), or within 90 days after the expiration of such period, or

(B) If a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) *Relationship of stock to decedent's estate.*—(A) *In general.* Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate is either—

(i) More than 35 percent of the value of the gross estate of such decedent, or

(ii) More than 50 percent of the taxable estate of such decedent.

(B) *Special rule for stock of two or more corporations.* For purposes of the 35 percent and 50 percent requirements of subparagraph (A), stock of two or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate more than 75 percent in value of the outstanding stock, shall be treated as the stock of a single corporation. For the purpose of the 75 percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(c) *Stock with substituted basis.* If—

(1) A shareholder owns stock of a corporation (referred to in this subsection as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as "old stock").

(2) The old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) Subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b) (1), subsection (a) shall apply in respect of a distribution in redemption of the new stock.

§ 1303-1 *General.* Section 303 provides that in certain cases a distribution in redemption of stock, the value of which is included in determining the value of the gross estate of a decedent, shall be treated as a distribution in full payment in exchange for the stock so redeemed.

§ 1303-2 *Requirements.* (a) Section 303 applies only where the distribution is with respect to stock of a corporation the value of whose stock in the gross estate of the decedent for Federal estate tax purposes is an amount in excess of (1) 35 percent of the value of the gross estate of such decedent, or (2) 50 percent of the taxable estate of such decedent. For the purposes of such 35 percent and 50 percent requirements, stock of two or more corporations, provided more than 75 percent in value of the outstanding stock of each such corporation is included in determining the value of the decedent's gross estate, shall be treated as the stock of a single corporation. For the purpose of the 75 percent requirement, stock which, at the decedent's death, represents the surviving spouse's interest in community property shall be considered as having been included in determining the value of the decedent's gross estate.

(b) For the purpose of section 303 (b) (2) (A) (i), the term "gross estate"

means the gross estate as computed in accordance with section 2031 (or, in the case of the estate of a decedent nonresident not a citizen of the United States, in accordance with section 2103). For the purpose of section 303 (b) (2) (A) (ii), the term "taxable estate" means the taxable estate as computed in accordance with section 2051 (or, in the case of the estate of a decedent nonresident not a citizen of the United States, in accordance with section 2106).

(c) (1) In determining whether the estate of the decedent is comprised of stock of a corporation of sufficient value to satisfy the percentage requirements of section 303 (b) (2) (A) and section 303 (b) (2) (B), the total value, in the aggregate, of all classes of stock of the corporation includible in determining the value of the gross estate is taken into account. A distribution under section 303 (a) may be in redemption of the stock of the corporation includible in determining the value of the gross estate, without regard to the class of such stock.

(2) The above may be illustrated by the following example:

Example. The gross estate of the decedent has a value of \$1,000,000, the taxable estate is \$700,000, and the sum of the death taxes and funeral and administration expenses is \$275,000. Included in determining the gross estate of the decedent is stock of three corporations which, for Federal estate tax purposes, is valued as follows:

Corporation A:	
Common stock	\$100,000
Preferred stock	100,000
Corporation B:	
Common stock	50,000
Preferred stock	350,000
Corporation C:	
Common stock	200,000

The stock of Corporation A and Corporation C included in the estate of the decedent constitutes all of the outstanding stock of both corporations. The stock of Corporation A and the stock of Corporation C, treated as the stock of a single corporation under section 303 (b) (2) (B), has a value in excess of \$350,000 (35 percent of the gross estate or 50 percent of the taxable estate). Likewise, the stock of Corporation B has a value in excess of \$350,000. The distribution by one or more of the above corporations, within the period prescribed in section 303 (b) (1), of amounts not exceeding, in the aggregate, \$275,000, in redemption of preferred stock or common stock of such corporation or corporations, will be treated as in full payment in exchange for the stock so redeemed.

(d) If stock includible in determining the value of the gross estate of a decedent is exchanged for new stock, the basis of which is determined by reference to the basis of the old stock, the redemption of the new stock will be treated the same under section 303 as the redemption of the old stock would have been. Thus section 303 shall apply with respect to a distribution in redemption of stock received by the estate of a decedent in connection with a reorganization under section 368, in a distribution or exchange under section 355 (or so much of section 356 as relates to section 355), in an exchange under section 1036 or a distribution to which section 305 (a) applies. Similarly, a distribution in redemption of stock will qualify under section 303, notwithstanding the stock redeemed is

section 306 stock to the extent that the conditions of section 303 are met.

(e) Section 303 applies to distributions made after the death of the decedent and (1) before the expiration of the 3-year period of limitations for the assessment of estate tax provided in section 6501 (a) (determined without the application of any provisions of law extending or suspending the running of such period of limitations), or within 90 days after the expiration of such period, or (2) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final. The extension of the period of distribution provided in section 303 (b) (1) (B) has reference solely to bona fide contests in the Tax Court and will not apply in the case of a petition for redetermination of a deficiency which is initiated solely for the purpose of extending the period within which section 303 would otherwise be applicable.

(f) While section 303 will most frequently have application in the case where stock is redeemed from the executor or administrator of an estate, the section is also applicable to distributions in redemption of stock included in the decedent's gross estate and held at the time of the redemption by any person who acquired the stock by any of the means comprehended by Part III, Subchapter A, Chapter 11 of Subtitle B, including the heir, legatee, or donee of the decedent, a surviving joint tenant, surviving spouse, appointee, or taker in default of appointment, or a trustee of a trust created by the decedent. Thus section 303 may apply with respect to a distribution in redemption of stock from a donee to whom the decedent has transferred stock in contemplation of death where the value of such stock is included in the decedent's gross estate under section 2035. Similarly, section 303 may apply to the redemption of stock from a beneficiary of the estate to whom an executor has distributed the stock pursuant to the terms of the will of the decedent. However, section 303 is not applicable to the case where stock is redeemed from a stockholder who has acquired the stock by gift or purchase from any person to whom such stock has passed from the decedent.

(g) The total application of section 303 with respect to stock included in the gross estate of any decedent can never exceed the sum of the amount of the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of the decedent's death and the amount of funeral and administration expenses allowable as deductions to the estate. In determining whether the total distributions in redemption of such stock made within the period of time prescribed in section 303 (b) (1) exceed the amount of such taxes, interest, and expenses, account shall be taken of all such distributions without regard to whether any distribution would be treated as a dividend were it not for section 303.

(h) For the purpose of section 303, the Federal estate tax or any other estate, inheritance, legacy, or succession tax shall be ascertained after the allowance of any credit, relief, discount, refund, remission or reduction of tax.

§ 1.303-3 Application of other sections. (a) The sole effect of section 303 is to exempt from tax as a dividend a distribution to which such section is applicable when made in redemption of stock includible in a decedent's gross estate. Such section does not, however, in any other manner affect the principles set forth in sections 302 and 306. Thus, if stock of a corporation is owned equally by A, B, and the C Estate, and the corporation redeems one-half of the stock of each shareholder, the determination of whether the distributions to A and B are essentially equivalent to dividends shall be made without regard to the effect which section 303 may have upon the taxability of the distribution to the C Estate.

(b) See section 304 relative to redemption of stock through the use of related corporations.

§ 1.304 Statutory provisions; redemption through use of related corporations.

Sec. 304. Redemption through use of related corporations.—(a) *Treatment of certain stock purchases.*—(1) *Acquisition by related corporation (other than subsidiary).* For purposes of sections 302 and 303, if—

(A) One or more persons are in control of each of two corporations, and

(B) In return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. In any case, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.

(2) *Acquisition by subsidiary.* For purposes of sections 302 and 303, if—

(A) In return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) The issuing corporation controls the acquiring corporation,

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) *Special rules for application of subsection (a).*—(1) *Rule for determinations under section 302 (b).* In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302 (b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318 (a) (relating to constructive ownership of stock) with respect to section 302 (b) for purposes of this paragraph, section 318 (a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

(2) *Amount constituting dividend.*—(A) *Where subsection (a) (1) applies.* In the case of any acquisition of stock to which paragraph (1) (and not paragraph (2)) of subsection (a) of this section applies, the determination of the amount which is a dividend shall be made solely by reference

to the earnings and profits of the acquiring corporation.

(B) *Where subsection (a) (2) applies.* In the case of any acquisition of stock to which subsection (a) (2) of this section applies, the determination of the amount which is a dividend shall be made as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

(c) *Control.*—(1) *In general.* For purposes of this section, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) *Constructive ownership.* Section 318 (a) (relating to the constructive ownership of stock) shall apply for purposes of determining control under paragraph (1). For purposes of the preceding sentence, section 318 (a) (2) (C) shall be applied without regard to the 50 percent limitation contained therein.

§ 1.304-1 General. Section 304 applies to sales of stock by a shareholder of one corporation to a related corporation which sales shall be treated as redemptions subject to sections 302 and 303.

§ 1.304-2 Acquisition by related corporation (other than subsidiary). (a) If a corporation, in return for property, acquires stock of another corporation from one or more persons and the person or persons from whom the stock was acquired were in control of both such corporations before the acquisition, then such property shall be treated as received in redemption of stock of the acquiring corporation. The stock received by the acquiring corporation shall be treated as a contribution to the capital of such corporation and shall have the same basis in its hands as it had in the hands of the transferor. The transferor's basis for his stock in the acquiring corporation shall be increased by the basis of stock surrendered by him. (But see below for subsequent reductions of basis in certain redemptions). As to each person transferring stock, the amount received shall be treated as a distribution of property under section 302 (d), unless as to such person such amount is to be treated as an exchange under the terms of section 302 (b) or section 303. In applying section 302 (b), reference shall be had to the shareholder's ownership of stock in the issuing corporation and not to his ownership of stock in the acquiring corporation (except for purposes of applying section 318 (a)). In determining control and applying section 302 (b), section 318 (a) (relating to the constructive ownership of stock) shall be applied without regard to the 50 percent limitation in section 318 (a) (2) (C). A series of redemptions referred to in section 302 (b) (2) (D) shall include acquisitions by either of the corporations of stock of the other and stock redemptions

by both corporations. If section 302 (d) applies to the surrender of stock by a shareholder, his basis for his stock in the acquiring corporation after the transaction (increased as above stated) shall not be decreased. If section 302 (d) does not apply, the property received shall be treated as if received in a redemption to which section 302 (a) applies, as a distribution in payment in exchange for stock of the acquiring corporation having a basis equal to the amount by which the shareholder's basis for his stock in the acquiring corporation was increased on account of the contribution to capital as provided for above. Accordingly, such amount shall be applied in reduction of the shareholder's basis for his stock in the acquiring corporation. Thus, the basis of each share of the shareholder's stock in the acquiring corporation will be the same as the basis of such share before the entire transaction. The holding period of the stock which is considered to have been redeemed shall be the same as the holding period of the stock actually surrendered.

(b) In any case in which two or more persons, in the aggregate, control two corporations, section 304 (a) (1) will apply to sales by such persons of stock in either corporation to the other (whether or not made simultaneously) provided the sales by each of such persons are related to each other. The determination of whether the sales are related to each other shall be dependent upon the facts and circumstances surrounding all of the sales. For this purpose, the fact that the sales may occur during a period of one or more years (such as in the case of a series of sales by persons who together control each of such corporation immediately prior to the first of such sales and immediately subsequent to the last of such sales) shall be disregarded, provided the other facts and circumstances indicate related transactions.

(c) The application of section 304 (a) (1) may be illustrated by the following examples:

Example (1). Corporation X and Corporation Y each have outstanding 100 shares of common stock. One-half of the stock of each corporation is owned by an individual, A, and one-half by another individual, B, who is unrelated to A. A sells 40 shares of Corporation X stock to Corporation Y for \$50,000, such stock having an adjusted basis of \$10,000 to A. After the sale, A is considered as owning:

(i) 10 shares directly.
(ii) 45 shares constructively since by virtue of his 50 percent ownership of Y, he constructively owns 50 percent of the 40 shares owned directly by Corporation Y, and 50 percent of the 50 shares attributed to Corporation Y because they are owned by Y's stockholder, B.

Since after the sale A owns a total of more than 50 percent of the voting power of all the outstanding stock of Corporation X, the transfer is not "substantially disproportionate" as to him as provided in section 302 (b) (2). The entire \$50,000 is, therefore, treated as a dividend to A to the extent of the earnings and profits of Corporation Y. The basis of the Corporation X stock to Corporation Y is \$10,000, its adjusted basis to A. The amount of \$10,000 is added to the basis of the stock of Corporation Y in the hands of A.

Example (2). Corporation X and Corporation Y each have outstanding 100 shares of common stock. A, an individual, owns one-half the stock of each corporation. B owns one-half the stock of Corporation X, and C owns one-half the stock of Corporation Y. A, B, and C are unrelated. A sells 30 shares of the stock of Corporation X to Corporation Y for \$50,000, such stock having an adjusted basis of \$10,000 to him. After the sale, A is considered as owning 35 shares of the stock of Corporation X (20 shares directly and 15 constructively because one-half of the 30 shares owned by Corporation Y are attributed to him). Since before the sale, he owned 50 percent of the stock of Corporation X and after the sale he owned directly and constructively only 35 percent of such stock, the redemption is substantially disproportionate as to him pursuant to the provisions of section 302 (b) (2). He, therefore, realizes a gain of \$40,000 (\$50,000 minus \$10,000). If the stock surrendered is a capital asset, such gain is long-term or short-term capital gain depending on the period of time that such stock was held. The basis to A for the stock of Corporation Y is not changed as a result of the entire transaction. The basis to Corporation Y for the stock of Corporation X is \$10,000, the basis of the transferor.

Example (3). Corporation X and Corporation Y each have outstanding 100 shares of common stock. H, an individual, W, his wife, S, his son, and G, his grandson, each own 25 shares of stock of each corporation. H sells all of his 25 shares of stock of Corporation X to Corporation Y. Since both before and after the transaction H owned directly and constructively 100 percent of the stock of Corporation X, the amount received by him for his stock of Corporation X is treated as a dividend to him to the extent of the earnings and profits of Corporation Y.

§ 1.304-3 Acquisition by a subsidiary. (a) If a subsidiary acquires stock of its parent corporation from a shareholder of the parent corporation, the acquisition of such stock shall be treated as though the parent corporation had redeemed its own stock. For the purpose of this section, a corporation is a parent corporation if it meets the 50 percent ownership requirements of section 304 (c). The determination whether the amount received shall be treated as an amount received in payment in exchange for the stock shall be made by applying section 303, or by applying section 302 (b) with reference to the stock of the issuing parent corporation. If such distribution would have been treated as a distribution of property (pursuant to section 302 (d)) under section 301, the entire amount of the selling price of the stock shall be treated as a dividend to the seller to the extent of the earnings and profits of the parent corporation determined as if the distribution had been made to it of the property that the subsidiary exchanged for the stock.

(b) Section 304 (a) (2) may be illustrated by the following example:

Example. Corporation M has outstanding 100 shares of common stock which are owned as follows: B, 75 shares, C, son of B, 20 shares, and D, daughter of B, 5 shares. Corporation M owns the stock of Corporation X. B sells his 75 shares of Corporation M stock to Corporation X. Under section 302 (b) (3) this is a termination of B's entire interest in Corporation M and the full amount received from the sale of his stock will be treated as payment in exchange for this stock, provided he fulfills the requirements of section 302

(c) (2) (relative to an acquisition of an interest in the corporations).

§ 1.305 Statutory provisions; distributions of stock and stock rights.

Sec. 305. Distributions of stock and stock rights—(a) General rule. Except as provided in subsection (b), gross income does not include the amount of any distribution made by a corporation to its shareholders, with respect to the stock of such corporation, in its stock or in rights to acquire its stock.

(b) *Distributions in lieu of money.* Subsection (a) shall not apply to a distribution by a corporation of its stock (or rights to acquire its stock), and the distribution shall be treated as a distribution of property to which section 301 applies—

(1) To the extent that the distribution is made in discharge of preference dividends for the taxable year of the corporation in which the distribution is made or for the preceding taxable year; or

(2) If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

(A) In its stock (or in rights to acquire its stock), or

(B) In property.

(c) *Cross references.* For special rules—

(1) Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (sec. 331 and following).

(2) In the case of a distribution which results in a gift, see section 2501 and following.

(3) In the case of a distribution which has the effect of the payment of compensation, see section 61 (a) (1).

§ 1.305-1 Stock dividends. A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend except as provided in section 305 (b). If the distribution of stock is received in discharge of preference dividends, to the extent that the stock received is not taxable under section 305, such stock, whether or not preferred stock, may be section 306 stock within the meaning of section 306 (c). A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock which would not otherwise be treated as a dividend shall not be so treated merely because such distribution was made out of treasury stock or consisted of rights to acquire treasury stock. See § 1.317-4 for distinction between stock and securities.

§ 1.305-2 Election of shareholders as to medium of payment. If any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property or in stock or rights to acquire stock, then the entire distribution will be treated, to the extent of its fair market value, as a distribution of money to which section 301 applies regardless of—

(a) Whether the distribution is actually made in whole or in part in stock or in stock rights;

(b) Whether the election is exercised or exercisable before or after the declaration of the distribution; or

(c) Whether the declaration of the dividend provides that payment will be made in one medium unless the shareholder specifically requests payment in the other.

§ 1.306 Statutory provisions; dispositions of certain stock.

Sec. 306. Dispositions of certain stock—(a) General rule. If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) *Dispositions other than redemptions.* If such disposition is not a redemption (within the meaning of section 317 (b))—

(A) The amount realized shall be treated as gain from the sale of property which is not a capital asset. This subparagraph shall not apply to the extent that—

(i) The amount realized, exceeds

(ii) Such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of section 306 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of—

(i) The amount treated under subparagraph (A) as gain from the sale of property which is not a capital asset, plus

(ii) The adjusted basis of the stock,

shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(2) *Redemption.* If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which section 301 applies.

(b) *Exceptions.* Subsection (a) shall not apply—

(1) *Termination of shareholder's interest—(A) Not in redemption.* If the disposition—

(i) Is not a redemption;

(ii) Is not, directly or indirectly, to a person the ownership of whose stock would (under section 318 (a)) be attributable to the shareholder; and

(iii) Terminates the entire stock interest of the shareholder in the corporation (and for purposes of this clause, section 318 (a) shall apply).

(B) *In redemption.* If the disposition is a redemption and section 302 (b) (3) applies.

(2) *Liquidations.* If the section 306 stock is redeemed in a distribution in partial or complete liquidation to which part II (sec. 331 and following) applies.

(3) *Where gain or loss is not recognized.* To the extent that, under any provision of this subtitle, gain or loss to the shareholder is not recognized with respect to the disposition of the section 306 stock.

(4) *Transactions not in avoidance.* If it is established to the satisfaction of the Secretary or his delegate—

(A) That the distribution, and the disposition or redemption, or

(B) In the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) *Section 306 stock defined—(1) In general.* For purposes of this subchapter, the term "section 306 stock" means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) *Distributed to seller.* Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305 (a), any part of such distribution was not includible in the gross income of the shareholder.

(B) *Received in a corporate reorganization or separation.* Stock which is not common stock and—

(i) V which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368 (a)), or in a distribution or exchange to which section 355 (or so much of section 358 as relates to section 355) applied, and

(ii) With respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) *Stock having transferred or substituted basis.* Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) *Exception where no earnings and profits.* For purposes of this section, the term "section 306 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(d) *Stock rights.* For purposes of this section—

(1) Stock rights shall be treated as stock, and

(2) Stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) *Convertible stock.* For purposes of subsection (c)—

(1) If section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) Common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) *Source of gain.* The amount treated under subsection (a) (1) (A) as gain from the sale of property which is not a capital asset shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871 (a) or section 881 (a), as the case may be.

(g) *Change in terms and conditions of stock.* If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) The fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) Such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of

stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) Subsection (c) (2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(h) *Stock received in distributions and reorganizations to which 1939 Code applied.* If stock—

(1) Was received in a distribution or reorganization to which the Internal Revenue Code of 1939 (or the corresponding provisions of prior law) applied,

(2) Such stock would have been section 306 stock if this Code applied to such distribution or reorganization, and

(3) Such stock is disposed of or redeemed on or after June 22, 1954,

then the foregoing subsections of this section shall not apply in respect of such disposition or redemption. The extent to which such disposition or redemption shall be treated as a dividend shall be determined as if the Internal Revenue Code of 1939 (as modified by the provisions of this Code other than the foregoing subsections of this section) continued to apply in respect of such disposition or redemption.

§ 1.306-1 General. (a) Section 306 provides, in general, that the proceeds from the sale or redemption of certain stock (usually preferred stock received either as a dividend or in a transaction in which no gain or loss is recognized) shall be treated either as gain from the sale of property which is not a capital asset, or as a distribution of property to which section 301 applies. If a shareholder sells or otherwise disposes of section 306 stock (other than by redemption or within the exceptions listed in section 306 (b)), the entire proceeds received from such disposition shall be treated as ordinary income from the sale of property not a capital asset, to the extent that the fair market value of the stock sold, on the date distributed to the shareholder, would have been a dividend to such shareholder had the distributing corporation distributed cash in lieu of stock. Any excess of the amount received over the sum of the amount treated as ordinary income plus the adjusted basis of the stock disposed of, shall be treated as gain from the sale of a capital asset or noncapital asset as the case may be. No loss shall be recognized. While the amount of earnings and profits at the time of distribution is one of the measures of the amount to be treated as ordinary income, no reduction of earnings and profits results from any disposition of stock other than a redemption. The term "disposition" under section 306 (a) (1) includes, among other things, pledges of stock under certain circumstances, particularly where the pledgee can look only to the stock itself as its security.

(b) Section 306 (a) (1) may be illustrated by the following examples:

Example (1). On December 15, 1954, A and B owned equally all of the stock of Corporation X which files its income tax return on a calendar year basis. On that date Corporation X distributed pro rata 100 shares of preferred stock as a dividend on its outstanding common stock. On December 15, 1954, the preferred stock had a fair market value of \$10,000. On December 31, 1954, the earnings and profits of Corporation X were \$20,000. The 50 shares of preferred stock so distributed to A had an allocated

basis to him of \$10 per share or a total of \$500 for the 50 shares. Such shares had a fair market value of \$5,000 when issued. A sold the 50 shares of preferred stock on July 1, 1955, for \$6,000. Of this amount \$5,000 will be treated as gain from the sale of property which is not a capital asset; \$500 (\$6,000 minus \$5,500) will be treated as gain from the sale of a capital or noncapital asset as the case may be.

Example (2). The facts are the same as in Example 1 except that A sold his 50 shares of preferred stock for \$5,100. Of this amount \$5,000 will be treated as gain from the sale of property which is not a capital asset. No loss will be allowed. There will be added back to the basis of the common stock of Corporation X with respect to which the preferred stock was distributed, \$400, the allocated basis of \$500 reduced by the \$100 received.

(c) The entire amount received by a shareholder from the redemption of section 306 stock shall be treated as a distribution of property under section 301. In the case of a redemption, the amount of the earnings and profits of the distributing corporation at the time the section 306 stock was distributed is immaterial.

§ 1.306-2 Exceptions. (a) If a shareholder terminates his entire stock interest in a corporation,

(1) By a sale or other disposition within the requirements of section 306 (b) (1) (A), or

(2) By redemption under section 302 (b) (3), (through the application of section 306 (b) (1) (B)),

the amounts received from such dispositions shall be treated as amounts received in part or full payment for the stock sold or redeemed. In the case of a sale, only the stock interest need be terminated. In determining whether an entire stock interest has been terminated under section 306 (b) (1) (A), all of the provisions of section 318 (a) (relating to constructive ownership of stock) shall be applicable. In determining whether a shareholder has terminated his entire interest in a corporation by a redemption of his stock under section 302 (b) (3), all of the provisions of section 318 (a) shall be applicable unless the shareholder meets the requirements of section 302 (c) (2) (relating to termination of all interest in the corporation). If the requirements of section 302 (c) (2) are met, section 318 (a) (1) (relating to members of a family) shall be inapplicable. Under all circumstances paragraphs (2), (3), and (4) of section 318 (a) shall be applicable.

(b) Section 306 (a) does not apply to—

(1) Redemptions of section 306 stock pursuant to a partial or complete liquidation of a corporation to which part II (section 331 and following) applies,

(2) Exchanges of section 306 stock solely for stock in connection with a reorganization or in an exchange under section 355 or section 1036 (relating to exchanges of stock for stock in the same corporation) provided no gain or loss is recognized to the shareholder as the result of the exchange of the stock (see § 1.306-3 (c) relative to the receipt of other property), and

(3) A disposition or redemption, if it is established to the satisfaction of the

Commissioner that such disposition or redemption was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. For example, in the absence of such a plan and of any other facts the preceding sentence would be applicable to the case of dividends and isolated dispositions of section 306 stock by minority shareholders. Similarly, in the absence of such a plan and of any other facts, if a shareholder received a distribution of 100 shares of section 306 stock on his holdings of 100 shares of voting common stock in a corporation and sells his voting common stock before he disposes of his section 306 stock, the subsequent disposition of his section 306 stock would not ordinarily be considered a disposition one of the principal purposes of which is the avoidance of Federal income tax.

§ 1.306-3 Section 306 stock defined.

(a) For the purpose of Subchapter C the term "section 306 stock" means stock which meets the requirements of section 306 (c) (1). Any class of stock distributed to a shareholder in a transaction in which no amount of income is includible in the income of a shareholder or no gain or loss is recognized may be section 306 stock, provided the distributing corporation has earnings and profits at the time of distribution and, for this purpose, the total amount of the earnings and profits is immaterial. However, except as provided in section 306 (g), if the distributing corporation has no earnings and profits at time of distribution, pursuant to section 306 (c) (2), the stock distributed will not constitute section 306 stock.

(b) For the purpose of section 306, rights to acquire stock shall be treated as stock, and stock acquired by the exercise of stock rights, if such rights were considered section 306 stock, shall be considered section 306 stock to the extent of the fair market value of such rights at the time of distribution and, for the purpose of section 306 (a) (1) (A) (ii) and section 306 (c) (2), shall be considered to have been distributed at the time such rights were distributed.

(c) Section 306 (c) (1) (A) provides that section 306 stock is any stock (other than common issued with respect to common) distributed to the seller thereof if, under section 305 (a) (relating to distributions of stock and stock rights) any part of the distribution was not included in the gross income of the distributee. Common stock received as a stock dividend will not be considered as section 306 stock unless such dividend is (1) distributed with respect to stock which is not common stock, and (2) is not otherwise taxable upon receipt. For example, common stock distributed in payment of arrearages on preferred stock dividends is section 306 stock unless the common stock is taxable under section 305 (b) (1). Where part of the distribution is in payment of the dividends for the current and preceding year on preferred stock and part of the distribution relates to arrearages on such stock, only that part of the distribution applying to arrearages will be treated as section 306 stock. For example, if 100 shares of

common stock are distributed in payment of all dividends due on preferred stock, one-tenth of such stock applying to the current and immediately preceding year's dividends and nine-tenths to arrearages, only nine-tenths of each share shall be in section 306 stock.

(d) Section 306 (c) (1) (B) includes in the definition of section 306 stock any stock except common stock, which is received by a shareholder in connection with a reorganization under section 368 or in a distribution or exchange under section 355 (or so much of section 356 as relates to section 355) provided the effect of the transaction is substantially the same as the receipt of the stock dividend. If, in a transaction to which section 356 is applicable, a shareholder exchanges section 306 stock for stock and money or other property, the entire amount of such money and of the fair market value of the other property (not limited to the gain recognized) shall be treated as a distribution of property to which section 301 applies. Common stock received in exchange for section 306 stock in a recapitalization shall not be considered section 306 stock.

(e) Section 306 (c) (1) (C) includes in the definition of section 306 stock any stock (except as provided in section 306 (c) (1) (B)) the basis of which in the hands of the person disposing of such stock, is determined by reference to section 306 stock held by such shareholder or any other person. Under this subparagraph common stock can be section 306 stock. Thus, if a person owning section 306 stock in Corporation A transfers it to Corporation B which is controlled by him in exchange for common stock of Corporation B, the common stock so received by him would be section 306 stock and subject to the provisions of section 306 (a) on its disposition. In addition, the section 306 stock transferred is section 306 stock in the hands of the transferee. Section 306 stock transferred by gift remains section 306 stock in the hands of the donee. Section 306 stock exchanged for section 306 stock retains its characteristics and stock received in exchange for section 306 stock under section 1036 (a) (relating to exchange of stock for stock in the same corporation) or so much of section 1031 (b) as relates to section 1036 (a) becomes section 306 stock and the entire amount of the fair market value of the other property received in such transaction shall be considered as received upon a disposition (other than a redemption) to which section 306 (a) applies. Section 306 stock ceases to be so classified if the basis of such stock is determined by reference to its fair market value on the date of the decedent-stockholder's death under section 1014.

(f) If section 306 stock which was distributed with respect to common stock, is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in section 306 stock), such common stock shall not be section 306 stock. This subparagraph applies to exchanges not coming within the purview of section 306 (c) (1) (B). Common stock which is convertible into stock

other than common stock or into property, shall not be considered common stock. It is immaterial whether the conversion privilege is contained in the stock or in some type of collateral agreement.

(g) If there is a substantial change in the terms and conditions of any stock, then, for the purposes of this section—

(1) The fair market value of such stock shall be the fair market value at the time of distribution or the fair market value at the time of such change, whichever is higher;

(2) The earnings and profits to be used as the measure of the amount to be treated as gain from the sale of property which is not a capital asset upon a disposition of such stock, shall be the earnings and profits at the date the stock was distributed or the earnings and profits on the date of such change, whichever amount is greater; and

(3) Section 306 (c) (2) shall be inapplicable if the distributing corporation had earnings and profits either at the time the stock was distributed or at the time the change in terms or conditions was made.

(h) When section 306 stock is disposed of, the amount treated under section 306 (a) (1) (A) as gain from the sale of property which is not a capital asset will, for the purposes of Part I of Subchapter N, be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If the amount is determined to be derived from sources within the United States, the amount shall be considered to be fixed or determinable annual or periodic gains, profits, and income within the meaning of section 871 (a) or section 881 (a), relating, respectively, to the tax on nonresident alien individuals and on foreign corporations not engaged in business in the United States.

(i) Section 306 shall be inapplicable to stock received before June 22, 1954, and to stock received after June 22, 1954, in transactions subject to the provisions of the 1939 Code. See § 1.391-1.

§ 1.307 Statutory provisions; basis of stock and stock rights acquired in distribution.

Sec. 307. *Basis of stock and stock rights acquired in distribution—(a) General rule.* If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as "new stock") in a distribution to which section 305 (a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary or his delegate.

(b) *Exception for certain stock rights—(1) In general.* If—

(A) A corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305 (a) applies, and

(B) The fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) *Election.* The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary or his delegate may by regulations prescribe, and shall be irrevocable when made.

(c) *Cross Reference.* For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

§ 1.307-1 General. (a) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 305 such distribution is not includible in gross income then, except as provided in section 307 (b) and § 1.307-2, the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 305 (a) part of the distribution is not includible in gross income (except as provided in section 307 (b) and § 1.307-2) the basis of the stock with respect to which the distribution is made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution without regard to the fair market value of any part of such distribution which is includible in gross income pursuant to section 305 (b). The date of distribution in each case shall be the date the stock or the rights are actually distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

(b) The application of paragraph (a) of this section is illustrated by the following example:

Example. A taxpayer in 1947 purchased 100 shares of common stock at \$100 per share and in 1954 by reason of the ownership of such stock acquired 100 rights entitling him to subscribe to 100 additional shares of such stock at \$90 a share. Immediately after the issuance of the rights, each of the shares of stock in respect of which the rights were acquired had a fair market value, ex-rights, of \$110 and the rights had a fair market value of \$19 each. The basis of the rights and the common stock for the purpose of determining the basis for gain or loss on a subsequent sale or exercise of the rights or a sale of the old stock is computed as follows:

100 (shares) × \$100 = \$10,000, cost of old stock (stock in respect of which the rights were acquired).
100 (shares) × \$110 = \$11,000, market value of old stock.
100 (rights) × \$19 = \$1,900, market value of rights.
11,000 of \$10,000 = \$8,527.13, cost of old stock apportioned to such stock.
1,900 of \$10,000 = \$1,472.87, cost of old stock apportioned to rights.

If the rights are sold, the basis for determining gain or loss will be \$14,728.77 per right. If the rights are exercised, the basis of the new stock acquired will be the subscription price paid therefor (\$90) plus the basis of the rights exercised (\$14,728.77 each) or \$104,728.77 per share. The remaining basis of the old stock for the purpose of determining gain or loss on a subsequent sale will be \$85,271.33 per share.

§ 1.307-2 Exception. The basis of rights to buy stock which are excluded from gross income under section 305 (a), shall be zero if the fair market value of such rights on the date of distribution is less than 15 percent of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights as provided in § 1.307 (a). The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the tax return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

Effects on Corporation

§ 1.311 Statutory provisions; taxability of corporation on distributions.

Sec. 311. Taxability of corporation on distribution.—(a) *General rule.* Except as provided in subsections (b) and (c) of this section and section 453 (d), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of—

(1) Its stock (or rights to acquire its stock), or

(2) Property.
(b) *LIFO inventory.*—(1) *Recognition of gain.* If a corporation inventorying goods under the method provided in section 472 (relating to last-in, first-out inventories) distributes inventory assets (as defined in paragraph (2) (A)), then the amount (if any) by which—

(A) The inventory amount (as defined in paragraph (2) (B)) of such assets under a method authorized by section 471 (relating to general rule for inventories), exceeds

(B) The inventory amount of such assets under the method provided in section 472,

shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(2) *Definitions.* For purposes of paragraph (1)—

(A) *Inventory assets.* The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(B) *Inventory amount.* The term "inventory amount" means, in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(3) *Method of determining inventory amount.* For purposes of this subsection, the inventory amount of assets under a method

authorized by section 471 shall be determined—

(A) If the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(B) If subparagraph (A) does not apply, by using cost or market, whichever is lower.

(c) *Liability in excess of basis.* If—

(1) A corporation distributes property to a shareholder with respect to its stock,

(2) Such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and

(3) The amount of such liability exceeds the adjusted basis (in the hands of the distributing corporation) of such property,

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its adjusted basis.

§ 1.311-1 General. (a) Except as provided in subsections (b) and (c) of section 311 (relating to distribution of inventory and to the distribution of property subject to or in connection with which a liability is assumed by a taxpayer) and section 453 (d) (relating to installment obligations) no gain or loss is recognized to a corporation on the distribution, with respect to its stock, of stock, or rights to acquire its stock, or property (regardless of the fact that such property may have appreciated or depreciated in value since its acquisition by the corporation). However, the proceeds of the sale of property made by a shareholder receiving such property as a dividend in kind from the corporation may be imputed to the corporation if, in fact, the corporation made the sale.

(b) In any case in which a corporation distributes assets which have been part of an inventory, the value of which has been computed for income tax purposes under the method provided in section 472 (relating to last-in, first-out inventories), such corporation shall—

(1) Compute the amount of its inventory under the method provided in section 472 immediately prior to the distribution and immediately after such distribution;

(2) Compute the difference between the two amounts described in (1) of this paragraph;

(3) Compute the amount of its inventory under the method authorized by section 471 (relating to general rule for inventories) immediately prior to the distribution and immediately after such distribution;

(4) Compute the difference between the two amounts determined under (3) of this paragraph.

If the amount computed under (4) of this paragraph is in excess of the amount computed under (2) of this paragraph, then such excess shall be included in the income of the corporation for the year in which such distribution occurs. In any case in which a corporation distributes assets which have been a part of an inventory whose value has been computed for income tax purposes under

the method provided in section 472, such corporation shall on the date of distribution record a specific statement of the amount of its inventory under each of the applicable methods for use in the determination of the amount of income includible under section 311.

(c) The following example illustrates the application of section 311 (b):

Example. Corporation R, a manufacturing corporation inventorying goods under the method provided in section 472, distributes 200 units of its inventory assets to its shareholders on November 15, 1955. Immediately before the distribution, the corporation held 300 identical inventory units at the following basis determined by reference to the value computed by using the LIFO method and the value computed by using the FIFO method, in the order of acquisition:

Number of units	Basis LIFO	Number of units	Basis FIFO
100.....	\$1,000	100.....	\$4,000
100.....	2,000	50.....	2,500
50.....	1,000	50.....	2,500
50.....	2,000	100.....	6,000

The amount includible in income pursuant to section 311 (b) is \$4,000 computed as follows:

(1) Inventory before distribution under FIFO method (a, b, c and d).....	\$15,000
(2) Inventory under FIFO method immediately after distribution (d).....	6,000
(3) Difference (FIFO basis of inventory distributed).....	\$9,000
(4) Inventory before distribution under LIFO method (a, b, c and d).....	\$6,000
(5) Inventory under LIFO method immediately after distribution (a).....	1,000
(6) Difference (LIFO basis of inventory distributed).....	5,000
(7) Amount includible in income under section 311 (b).....	4,000

(d) Section 311 (c) provides for the inclusion in income of an amount equal to the excess of a liability over the basis of property distributed. For example, if property which is a capital asset having an adjusted basis to the distributing corporation of \$100 and a fair market value of \$1,000 (but subject to a liability of \$900) is distributed to a shareholder, such distribution is taxable (as long or short-term gain, as the case may be) to the corporation to the extent of the excess of the liability (\$900) over the adjusted basis (\$100) or (\$800). If the property subject to a liability were not a capital asset in the hands of the distributing corporation, the gain would be taxable at rates applicable to the sale of noncapital assets. The holding period of assets so distributed shall be determined as if such property were sold on the date of the distribution.

§ 1.312 Statutory provisions; effect on earnings and profits.

Sec. 312. *Effect on earnings and profits—*
(a) *General rule.* Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its

stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

- (1) The amount of money,
- (2) The principal amount of the obligations of such corporation, and
- (3) The adjusted basis of the other property,

so distributed.

(b) *Certain inventory assets—*(1) *In general.* On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in paragraph (2) (A)) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation—

(A) Shall be increased by the amount of such excess; and

(B) Shall be decreased by whichever of the following is the lesser:

- (i) The fair market value of the inventory assets distributed, or
- (ii) The earnings and profits (as increased under subparagraph (A)).

(2) *Definitions—*(A) *Inventory assets.* For purposes of paragraph (1), the term "inventory assets" means—

(i) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(ii) Property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and

(iii) Unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subparagraph.

(B) *Unrealized receivables or fees.* For purposes of subparagraph (A) (iii), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(i) Goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(ii) Services rendered or to be rendered.

(c) *Adjustments for liabilities, etc.* In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) The amount of any liability to which the property distributed is subject,

(2) The amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(3) Any gain to the corporation recognized under subsection (b) or (c) of section 311.

(d) *Certain distributions of stock and securities—*(1) *In general.* The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this Code applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) If no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this Code, or

(B) If the distribution was not subject to tax in the hands of such distributee by reason of section 305 (a).

(2) *Prior distributions.* In the case of a distribution of stock or securities, or property, to which section 115 (h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115 (h), or the corresponding provision of prior law, as the case may be.

(3) *Stock or securities.* For purposes of this subsection, the term "stock or securities" includes rights to acquire stock or securities.

(e) *Special rule for partial liquidations and certain redemptions.* In the case of amounts distributed in partial liquidation (whether before or after June 22, 1954) or in a redemption to which section 302 (a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.

(f) *Effect on earnings and profits of gain or loss and of receipt of tax-free distributions—*(1) *Effect on earnings and profits of gain or loss.* The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) For the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) For purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) *Effect on earnings and profits of receipt of tax-free distributions.* Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307 (b), be so allocated).

(g) *Earnings and profits—Increase in value accrued before March 1, 1913.* (1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be

applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(b) *Earnings and profits of personal service corporations.* In the case of a personal service corporation subject for any taxable year to supplement S of the Internal Revenue Code of 1939, an amount equal to the undistributed supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

(i) *Allocation in certain corporate separations.* In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary or his delegate.

(j) *Distribution of proceeds of loan insured by the United States—(1) In general.* If a corporation distributes property with respect to its stock, and if, at the time of the distribution—

(A) There is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(B) The amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of subparagraph (B) of the preceding sentence, the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016 (a) (2) (relating to adjustment for depreciation, etc.). For purposes of this paragraph, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

(2) *Effective date.* Paragraph (1) shall apply only with respect to distributions made on or after June 22, 1954.

§ 1.312-1 *Adjustment to earnings and profits reflecting distributions by corporations.* (a) In general, on the distribution of property by a corporation, its earnings and profits shall be decreased by—

(1) The amount of money,

(2) The principal amount of the obligations of such corporation issued in such distribution, and

(3) The adjusted basis of other property.

(b) The adjustment provided in section 312 (a) (3) and (a) (3) of this section with respect to a distribution of property (other than money or its own

obligations) shall be made notwithstanding the fact that such property has appreciated or depreciated in value since acquisition.

(c) The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). Corporation A distributes property with a value of \$10,000 and a basis of \$5,000. It has \$12,500 in earnings and profits. The reduction in earnings and profits by reason of such distribution is \$5,000. Such is the reduction even though the amount of \$10,000 is includible in the income of the shareholder (other than a corporation) as a dividend.

Example (2). The facts are the same as in example (1) above except that the property has a basis of \$15,000 and the earnings and profits of the corporation are \$20,000. The reduction in earnings and profits is \$15,000. Such is the reduction even though only the amount of \$10,000 is includible in the income of the shareholder (other than a corporation) as a dividend.

(d) In the case of a distribution of stock a portion of which is includible in income by reason of section 305 (b), the earnings and profits shall be reduced by the fair market value of such portion. No reduction shall be made if stock is not includible in income under the provisions of section 305.

(e) No adjustment shall be made in the amount of the earnings and profits of the issuing corporation upon a disposition of section 306 stock unless such disposition is a redemption.

§ 1.312-2 *Distributions of inventory assets.* The rules provided in section 312 (b) (relating to distributions of certain inventory assets) shall be applicable without regard to the method used in computing inventories for the purpose of the computation of taxable income.

§ 1.312-3 *Liabilities.* The amount of any reductions in earnings and profits described in section 312 (a) or (b) shall be reduced by the amount of any liability to which the property distributed was subject and by the amount of any other liability of the corporation assumed by the shareholder in connection with such distribution.

§ 1.312-4 *Examples of adjustments provided in section 312 (c).* The adjustments provided in section 312 (c) may be illustrated by the following examples.

Example 1. On December 2, 1954, Corporation X distributed to its sole shareholder, A, an individual, as a dividend in kind a vacant lot which was not an inventory asset. On that date, the lot had a fair market value of \$5,000 and was subject to a mortgage of \$2,000. The adjusted basis of the lot was \$3,100. The amount of the earnings and profits was \$10,000. The amount of the dividend received by A is \$3,000 (\$5,000, the fair market value, less \$2,000, the amount of the mortgage) and the reduction in the earnings and profits of Corporation X is \$1,100 (\$3,100, the basis, less \$2,000, the amount of mortgage).

Example (2). The facts are the same as in example (1) above with the exception that the amount of the mortgage to which the property was subject was \$4,000. The amount of the dividend received by A is \$1,000, and there is no reduction in the earnings and profits of the corporation (disregarding any tax on Corporation X) as a result of the distribution. There is, however,

a gain of \$900 recognized to Corporation X, the difference between the basis of the property (\$3,100) and the amount of the mortgage (\$4,000), under section 311 (c) and an increase in earnings and profits of \$900.

Example (3). Corporation A distributed in kind to its shareholders, not in liquidation, inventory assets which had a basis on the "Fifo" method (section 472) of \$46,000 and on the basis of cost or market (section 471) of \$50,000. The inventory had a fair market value of \$55,000 and was subject to a liability of \$35,000. The distribution results in a net decrease in earnings and profits of Corporation A of \$11,000 (without regard to any tax on Corporation A) computed as follows:

"Fifo" basis of inventory	\$50,000
Less: "Lifo" basis of inventory	46,000
Gain recognized—addition to earnings and profits (section 311 (b))	\$4,000
Adjustment to earnings and profits required by section 312 (b) (1) (A):	
Fair market value of inventory	\$55,000
Less: "Lifo" basis plus adjustment under section 311 (b)	50,000
	5,000
Total increase in earnings and profits	9,000
Decrease in earnings and profits—under section 312 (b) (1) (B) (i)	\$55,000
Less: Liability assumed	35,000
Net amount of distribution (decrease in earnings)	20,000
Net decrease in earnings and profits	11,000

§ 1.312-5 *Special rule for partial liquidations and certain redemptions.* The part of the distribution properly chargeable to capital account within the provisions of section 312 (e) shall not be considered a distribution of earnings and profits within the meaning of section 301 for the purpose of determining taxability of subsequent distributions by the corporation.

§ 1.312-6 *Earnings and profits.* (a) In determining the amount of earnings and profits (whether of the taxable year, or accumulated since February 28, 1913, or accumulated before March 1, 1913) due consideration must be given to the facts, and, while mere bookkeeping entries increasing or decreasing surplus will not be conclusive, the amount of the earnings and profits in any case will be dependent upon the method of accounting properly employed in computing net income. For instance, a corporation keeping its books and filing its income tax returns under subchapter E, on the cash receipts and disbursements basis may not use the accrual basis in determining earnings and profits; a corporation computing income on the installment basis as provided in section 453 shall, with respect to the installment transactions, compute earnings and profits on such basis; and an insurance company subject to taxation under section 831 shall exclude from earnings and profits that portion of any premium which is unearned under the provisions of section 832 (b) (4) and which is segregated accordingly in the unearned premium reserve.

(b) Among the items entering into the computation of corporate earnings and profits for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well as all items includible in gross income under section 61 or corresponding provisions of prior Revenue Acts. Gains and losses within the purview of section 1002 or corresponding provisions of prior Revenue Acts are brought into the earnings and profits at the time and to the extent such gains and losses are recognized under that section. Interest on State bonds and certain other obligations, although not taxable when received by a corporation, is taxable to the same extent as other dividends when distributed to shareholders in the form of dividends.

(c) (1) In the case of a corporation in which depletion or depreciation is a factor in the determination of income, the only depletion or depreciation deductions to be considered in the computation of the total earnings and profits are those based on cost or other basis without regard to March 1, 1913, value. In computing the earnings and profits for any period beginning after February 28, 1913, the only depletion or depreciation deductions to be considered are those based on (i) cost or other basis, if the depletable or depreciable asset was acquired subsequent to February 28, 1913, or (ii) adjusted cost or March 1, 1913, value, whichever is higher, if acquired before March 1, 1913. Thus, discovery or percentage depletion under all Revenue Acts for mines and oil and gas wells is not to be taken into consideration in computing the earnings and profits of a corporation. Similarly, where the basis of property in the hands of a corporation is a substituted basis, such basis, and not the fair market value of the property at the time of the acquisition by the corporation, is the basis for computing depletion and depreciation for the purpose of determining earnings and profits of the corporation.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Oil producing property which A had acquired in 1949 at a cost of \$28,000 was transferred to Corporation Y in December 1951, in exchange for all of its capital stock. The fair market value of the stock and of the property as of the date of the transfer was \$247,000. Corporation Y, after four years' operation, effected in 1955 a cash distribution to A in the amount of \$165,000. In determining the extent to which the earnings and profits of Corporation Y available for dividend distributions have been increased as the result of production and sale of oil, the depletion to be taken into account is to be computed upon the basis of \$28,000 established in the nontaxable exchange in 1951 regardless of the fair market value of the property or of the stock issued in exchange therefor.

(d) A loss sustained for a year before the taxable year does not affect the earnings and profits of the taxable year. However, in determining the earnings and profits accumulated since February 28, 1913, the excess of a loss sustained for a year subsequent to February 28, 1913, over the undistributed earnings and profits accumulated since February 28,

1913, and before the year for which the loss was sustained, reduces surplus as of March 1, 1913, to the extent of such excess. If the surplus as of March 1, 1913, was sufficient to absorb such excess, distributions to shareholders after the year of the loss are out of earnings and profits accumulated since the year of the loss to the extent of such earnings.

(e) With respect to the effect on the earnings and profits accumulated since February 28, 1913, of distributions made on or after January 1, 1916, and before August 6, 1917, out of earnings or profits accumulated before March 1, 1913, which distributions were specifically declared to be out of earnings and profits accumulated before March 1, 1913, see section 31 (b) of the Revenue Act of 1916, as amended by section 1211 of the Revenue Act of 1917.

§ 1312-7 *Effect on earnings and profits of gain or loss realized after February 28, 1913.* (a) In order to determine the effect on earnings and profits of gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation, section 312 (f) (1) prescribed certain rules for—

(1) The computation of the total earnings and profits of the corporation of most frequent application in determining invested capital; and

(2) The computation of earnings and profits of the corporation for any period beginning after February 28, 1913, of most frequent application in determining the source of dividend distributions.

Such rules are applicable whenever under any provision of this subtitle it is necessary to compute either the total earnings and profits of the corporation or the earnings and profits for any period beginning after February 28, 1913. For example, since the earnings and profits accumulated after February 28, 1913, or the earnings and profits of the taxable year, are earnings and profits for a period beginning after February 28, 1913, the determination of either must be in accordance with the rules herein prescribed for the ascertainment of earnings and profits for any period beginning after February 28, 1913. Under subparagraph (1) of this paragraph, such gain or loss is determined by using the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, but disregarding value as of March 1, 1913. Under subparagraph (2) of this paragraph, there is used such adjusted basis for determining gain, giving effect to the value as of March 1, 1913, whenever applicable. In both cases the rules are the same as those governing depreciation and depletion in computing earnings and profits (see § 1312-6). Under both subparagraphs (1) and (2) of this paragraph, the adjusted basis is subject to the limitations of the third sentence of section 312 (f) (1) requiring the use of adjustments proper in determining earnings and profits. The proper adjustments may differ under (A) and (B) of the first sentence of section 312 (f) (1) depending upon the basis to which the adjustments are to be made. If the application of (B) of the first sentence of section 312 (f)

(1) results in a loss and if the application of (A) of such sentence to the same transaction reaches a different result, then the loss under (B) of such first sentence will be subject to the adjustment thereto required by section 312 (g) (2). (See § 1312-9).

(b) (1) The gain or loss so realized increases or decreases the earnings and profits to, but not beyond, the extent to which such gain or loss was recognized in computing taxable income (or net income, as the case may be) under the law applicable to the year in which such sale or disposition was made. As used in this paragraph, the term "recognized" has reference to that kind of realized gain or loss which is recognized for income tax purposes by the statute applicable to the year in which the gain or loss was realized. For example, see section 356. A loss (other than a wash sale loss with respect to which a deduction is disallowed under the provisions of section 1091 or corresponding provisions of prior revenue laws) may be recognized though not allowed as a deduction (by reason, for example, of the operation of sections 267 and 1211 and corresponding provisions of prior revenue laws) but the mere fact that it is not allowed does not prevent decrease in earnings and profits by the amount of such disallowed loss. Wash sale losses, however, disallowed under section 1091 and corresponding provisions of prior revenue laws, are deemed nonrecognized losses and do not reduce earnings or profits. The "recognized" gain or loss for the purpose of computing earnings and profits is determined by applying the recognition provisions to the realized gain or loss computed under the provisions of section 312 (f) (1) as distinguished from the realized gain or loss used in computing net income.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). Corporation X on January 1, 1952, owned stock in Corporation Y which it had acquired from Corporation Y in December 1951, in an exchange transaction in which no gain or loss was recognized. The adjusted basis to Corporation X of the property exchanged by it for the stock in Corporation Y was \$30,000. The fair market value of the stock in Corporation Y when received by Corporation X was \$930,000. On April 9, 1955, Corporation X made a cash distribution of \$900,000 and, except for the possible effect of the transaction in 1951, had no earnings or profits accumulated after February 28, 1913, and had no earnings or profits for the taxable year. The amount of \$900,000 representing the excess of the fair market value of the stock of Corporation Y over the adjusted basis of the property exchanged therefor was not recognized gain to Corporation X under the provisions of section 112 of the Internal Revenue Code of 1939. Accordingly, the earnings and profits of Corporation X are not increased by \$900,000, the amount of the gain realized but not recognized in the exchange, and the distribution was not a taxable dividend. The basis in the hands of Corporation Y of the property acquired by it from Corporation X is \$30,000. If such property is thereafter sold by Corporation Y, gain or loss will be computed on such basis of \$30,000, and earnings and profits will be increased or decreased accordingly.

Example (2). On January 2, 1910, Corporation M acquired nondepreciable property at a cost of \$1,000. On March 1, 1913, the fair market value of such property in the hands of Corporation M was \$2,200. On December 31, 1952, Corporation M transfers such property to Corporation N in exchange for \$1,900 in cash and all Corporation N's stock, which has a fair market value of \$1,100. For the purpose of computing the total earnings and profits of Corporation M, the gain on such transaction is \$2,000 (the sum of \$1,900 in cash and stock worth \$1,100 minus \$1,000, the adjusted basis for computing gain, determined without regard to March 1, 1913, value), \$1,900 of which is recognized under section 356, since this was the amount of money received, although for the purpose of computing net income the gain is only \$800 (the sum of \$1,900 in cash and stock worth \$1,100, minus \$2,200, the adjusted basis for computing gain determined by giving effect to March 1, 1913, value). Such earnings and profits will therefore be increased by \$1,900. In computing the earnings and profits of Corporation M for any period beginning after February 28, 1913, however, the gain arising from the transaction, like the taxable gain, is only \$800, all of which is recognized under section 112 (c) of the Internal Revenue Code of 1939, the money received being in excess of such amount. Such earnings and profits will therefore be increased by only \$800 as a result of the transaction. For increase in that part of the earnings and profits consisting of increase in value of property accrued before, but realized on or after March 1, 1913, see § 1.312-9.

Example (3). On July 31, 1955, Corporation R owned oil-producing property acquired after February 28, 1913, at a cost of \$200,000, but having an adjusted basis (by reason of taking percentage depletion) of \$100,000 for determining gain in computing net income. However, the adjusted basis of such property to be used in computing gain or loss for the purpose of earnings and profits is, because of the provisions of the third sentence of section 312 (f) (1), \$150,000. On such day Corporation R transferred such property to the Corporation S in exchange for \$25,000 in cash and all of the stock of Corporation S, which had a fair market value of \$100,000. For the purpose of computing taxable income, Corporation R has realized a gain of \$25,000 as a result of this transaction, all of which is recognized under section 356. For the purpose of computing earnings and profits, however, Corporation R has realized a loss of \$25,000, none of which is recognized owing to the provisions of section 356 (c). The earnings and profits of Corporation R are therefore neither increased nor decreased as a result of the transaction. The adjusted basis of the Corporation S stock in the hands of Corporation R for purposes of computing earnings and profits, however, will be \$125,000 (though only \$100,000 for the purpose of computing taxable income), computed as follows:

Basis of property transferred	\$200,000
Less money received on exchange	25,000
Plus gain or minus loss recognized on exchange	None
Basis of stock	175,000
Less adjustments (same as those used in determining adjusted basis of property transferred)	50,000
Adjusted basis of stock	125,000

If, therefore, Corporation R should subsequently sell the Corporation S stock for \$100,000, a loss of \$25,000 will again be realized for the purpose of computing earnings and profits, all of which will be recognized and will be applied to decrease the earnings and profits of Corporation R.

(c) (1) The third sentence of section 312 (f) (1) provides for cases in which the adjustments, prescribed in section 1016, to the basis indicated in (A) or (B), as the case may be, of the first sentence of section 312 (f) (1), differ from the adjustments to such basis proper for the purpose of determining earnings or profits. The adjustments provided by such third sentence reflect the treatment provided by § 1.316 relative to cases where the deductions for depletion and depreciation in computing net income differ from the deductions proper for the purpose of computing earnings and profits.

(2) The effect of the third sentence of section 312 (f) (1) may be illustrated by the following examples:

Example (1). Corporation X purchased on January 2, 1931, an oil lease at a cost of \$10,000. The lease was operated only for the years 1931 and 1932. The deduction for depletion in each of the years 1931 and 1932 amounted to \$2,750, of which amount \$1,750 represented percentage depletion in excess of depletion based on cost. The lease was sold in 1955 for \$15,000. Under section 1016 (a) (2), in determining the gain or loss from the sale of the property, the basis must be adjusted for cost depletion of \$1,000 in 1931 and percentage depletion of \$2,750 in 1932. However, the adjustment of such basis, proper for the determination of earnings and profits, is \$1,000 for each year, or \$2,000. Hence, the cost is to be adjusted only to the extent of \$2,000, leaving an adjusted basis of \$8,000 and the earnings and profits will be increased by \$7,000, and not by \$8,750. The difference of \$1,750 is equal to the amount by which the percentage depletion for the year 1932 (\$2,750) exceeds the depletion on cost for that year (\$1,000) and has already been applied in the computation of earnings and profits for the year 1932 by taking into account only \$1,000 instead of \$2,750 for depletion in the computation of such earnings and profits. (See § 1.316-1.)

Example (2). If, in example (1), above, the property, instead of being sold, is exchanged in a transaction described in section 1031 for like property having a fair market value of \$7,750 and cash of \$7,250, then the increase in earnings and profits amounts to \$7,000, that is, \$15,000 (\$7,750 plus \$7,250) minus the basis of \$8,000. However, in computing net income of Corporation X, the gain is \$8,750, that is, \$15,000 minus \$6,250 (\$10,000 less depletion of \$3,750), of which only \$7,250 is recognized because the recognized gain cannot exceed the sum of money received in the transaction. See section 1031 (b) and the corresponding provisions of prior revenue laws. If, however, the cash received was only \$2,250 and the value of the property received was \$12,750, then the increase in earnings and profits would be \$2,250, that amount being the gain recognized under section 1031.

(d) For adjustment and allocation of the earnings and profits of the transferor as between the transferor and the transferee in cases where the transfer of property by one corporation to another corporation results in the nonrecognition in whole or in part of gain or loss, see § 1.312-10; and see section 381 for earnings and profits of successor corporations in certain transactions.

§ 1.312-8 *Effect on earnings and profits of receipt of tax-free distributions requiring adjustment or allocation of basis of stock.* (a) In order to determine

the effect on earnings and profits, where a corporation receives (after February 28, 1913) from a second corporation a distribution which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, section 312 (f) prescribes certain rules. It provides that the amount of such distribution shall not increase the earnings and profits of the first or receiving corporation in the following cases: (1) No such increase shall be made in respect of the part of such distribution which (under the law applicable to the year in which the distribution was made) is directly applied in reduction of the basis of the stock in respect of which the distribution was made and (2) no such increase shall be made if (under the law applicable to the year in which the distribution was made) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would but for section 307 (b) be so allocated). Where, therefore, the law (applicable to the year in which the distribution was made, as, for example, a distribution in 1934 from earnings and profits accumulated before March 1, 1913) requires that the amount of such distribution shall be applied against and reduce the basis of the stock with respect to which the distribution was made, there is no increase in the earnings and profits by reason of the receipt of such distribution. Similarly, where there is received by a corporation a distribution from another corporation in the form of a stock dividend and the law applicable to the year in which such distribution was made requires the allocation, as between the old stock and the stock received as a dividend, of the basis of the old stock (or such basis would but for section 307 (b) be so allocated), then there is no increase in the earnings and profits by reason of the receipt of such stock dividend even though such stock dividend constitutes income within the meaning of the sixteenth amendment to the Constitution.

(b) The principles set forth in paragraph (a) of this section may be illustrated by the following examples:

Example (1). Corporation X in 1955 distributed to Corporation Y, one of its shareholders, \$10,000 which was out of earnings or profits accumulated before March 1, 1913, and did not exceed the adjusted basis of the stock in respect of which the distribution was made. This amount of \$10,000 was, therefore, a tax-free distribution and under the provisions of section 301 (c) (2) must be applied against and reduce the adjusted basis of the stock in respect of which the distribution was made. The earnings and profits of Corporation Y are not increased by reason of the receipt of this distribution.

Example (2). Corporation Z in 1955 had outstanding common and preferred stock of which Corporation Y held 100 shares of the common and no preferred. The stock had a cost basis to Corporation Y of \$100 per share, or a total cost of \$10,000. In December of that year it received a dividend of 100 shares of the preferred stock of Corporation Z. Such distribution is a stock dividend which, under section 305, was not taxable and was accordingly not included in the gross income of Corporation Y. The original cost

of \$10,000 is allocated to the 200 shares of Corporation Z none of which has been sold or otherwise disposed of by Corporation Y. See section 307 and § 1.307-1. The earnings and profits of Corporation Y are not increased by reason of the receipt of such stock dividend.

§ 1.312-9 Adjustments to earnings and profits reflecting increase in value accrued before March 1, 1913. (a) In order to determine, for the purpose of ascertaining the source of dividend distributions, that part of the earnings and profits which is represented by increase in value of property accrued before, but realized on or after, March 1, 1913, section 312 (g) prescribes certain rules.

(b) (1) Section 312 (g) (1) sets forth the general rule with respect to computing the increase to be made in that part of the earnings and profits consisting of increase in value of property accrued before, but realized on or after, March 1, 1913.

(2) The effect of section 312 (g) (1) may be illustrated by the following examples:

Example (1). Corporation X acquired nondepreciable property before March 1, 1913, at a cost of \$10,000. Its fair market value as of March 1, 1913, was \$12,000 and it was sold in 1955 for \$15,000. The increase in earnings and profits based on the value as of March 1, 1913, representing earnings and profits accumulated since February 28, 1913, is \$3,000. If the basis is determined without regard to the value as of March 1, 1913, there would be an increase in earnings and profits of \$5,000. The difference of \$2,000 (\$5,000 minus \$3,000) represents the increase to be made in that part of the earnings and profits of Corporation X consisting of the increase in value of property accrued before, but realized on or after, March 1, 1913.

Example (2). Corporation Y acquired depreciable property in 1908 at a cost of \$100,000. Assuming no additions or betterments, and that the depreciation sustained before March 1, 1913, was \$10,000, the adjusted cost as of that date was \$90,000. Its fair market value as of March 1, 1913, was \$94,000 and on February 29, 1955, it was sold for \$25,000. For the purpose of determining gain from the sale, the basis of the property is the fair market value of \$94,000 as of March 1, 1913, adjusted for depreciation for the period subsequent to February 28, 1913, computed on such fair market value. If the amount of the depreciation deduction allowed after February 28, 1913, and properly allowable for each of such years to the date of the sale in 1955 is the aggregate sum of \$81,467, the adjusted basis for determining gain in 1955 (\$94,000 less \$81,467) is \$12,533 and the gain would be \$12,467 (\$25,000 less \$12,533). The increase in earnings and profits accumulated since February 28, 1913, by reason of the sale, based on the value as of March 1, 1913, adjusted for depreciation is \$12,467. If the depreciation since February 28, 1913, had been based on the adjusted cost of \$90,000 (\$100,000 less \$10,000) instead of the March 1, 1913, value of \$94,000, the depreciation sustained from that date to the date of sale would have been \$78,000 instead of \$81,467 and the actual gain on the sale based on the cost of \$100,000 adjusted by depreciation on such cost to \$12,000 (\$100,000 reduced by the sum of \$10,000 and \$78,000) would be \$13,000 (\$25,000 less \$12,000). If the adjusted basis of the property was determined without regard to the value as of March 1, 1913, there would be an increase in earnings and profits of \$13,000. The difference of \$533 (\$13,000 minus \$12,467) represents the increase to be made in that part of the earnings and profits of Corporation Y consisting of the

increase in value of property accrued before, but realized on or after, March 1, 1913 (assuming that the proper increase in such surplus had been made each year for the difference between depreciation based on cost and the depreciation based on March 1, 1913, value). Thus, the total increase in that part of earnings and profits consisting of the increase in value of property accrued before, but realized on or after, March 1, 1913, is \$4,000 (\$94,000 less \$90,000).

(c) (1) Section 312 (g) (2) is an exception to the general rule in section 312 (g) (1) and also operates as a limitation on the application of section 312 (f). It provides that, if the application of part (B) of the first sentence of section 312 (f) (1) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding section 312 (f) and in lieu of the rule provided in section 312 (g) (1), the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss, exceeds the adjusted basis computed without regard to the fair market value of the property on March 1, 1913. If the amount so applied in reduction of the loss exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before, but realized on or after, March 1, 1913.

(2) The application of section 312 (g) (2) may be illustrated by the following examples:

Example (1). Corporation Y acquired nondepreciable property before March 1, 1913, at a cost of \$8,000. Its fair market value as of March 1, 1913, was \$13,000, and it was sold in 1955 for \$10,000. Under (B) of the first sentence of section 312 (f) (1) the adjusted basis would be \$13,000 and there would be a loss of \$3,000. The application of (B) of the first sentence of section 312 (f) (1) would result in a loss from the sale in 1955 to be applied in decrease of earnings and profits for that year. Section 312 (g) (2), however, applies and the loss of \$3,000 is reduced by the amount by which the adjusted basis of \$13,000 exceeds the cost of \$8,000 (the adjusted basis computed without regard to the value on March 1, 1913), namely, \$5,000. The amount of the loss is, accordingly, reduced from \$3,000 to zero and there is no decrease in earnings and profits of Corporation Y for the year 1955 as a result of the sale. The amount applied in reduction of the decrease, namely, \$5,000, exceeds \$3,000. Accordingly, as a result of the sale the excess of \$2,000 increases that part of the earnings and profits of Corporation Y consisting of increase in value of property accrued before, but realized on or after March 1, 1913.

Example (2). Corporation Z acquired nondepreciable property before March 1, 1913, at a cost of \$10,000. Its fair market value as of March 1, 1913, was \$12,000, and it was sold in 1955 for \$8,000. Under (2) of the first sentence of section 312 (f) the adjusted basis would be \$12,000 and there would be a loss of \$4,000. The application of (2) of the first sentence of section 312 (f) would result in a loss from the sale in 1955 to be applied in decrease of earnings and profits for that year. Section 312 (g) (2), however, applies and the loss of \$4,000 is reduced by the amount by which the adjusted basis of \$12,000 exceeds the cost of \$10,000 (the adjusted basis computed without regard to the value on March 1, 1913),

namely, \$2,000. The amount of the loss is, accordingly, reduced from \$4,000 to \$2,000 and the decrease in earnings and profits of Corporation Z for the year 1955 as a result of the sale is \$2,000 instead of \$4,000. The amount applied in reduction of the decrease, namely, \$2,000, does not exceed \$4,000. Accordingly, as a result of the sale there is no increase in that part of the earnings and profits of Corporation Z consisting of increase in value of property accrued before, but realized on or after, March 1, 1913.

§ 1.312-10 Allocation of earnings in certain corporate separations. (a) If one corporation transfers part of its assets constituting an active trade or business to another corporation in a transaction to which section 368 (a) (1) (D) applies and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, the earnings and profits of the distributing corporation immediately before the transaction shall be allocated between the distributing corporation and the controlled corporation. Generally, such allocation shall be made in proportion to the fair market value of the business or businesses retained by the distributing corporation and the business or businesses of the controlled corporation immediately after the transaction. In a proper case, allocation may also be made between the distributing corporation and the controlled corporation in proportion to the net basis of the assets transferred and of the assets retained or by such other method as may be appropriate under the facts and circumstances of the case. The term "net basis" means the basis of the assets less liabilities assumed or liabilities to which such assets are subject. The part of the earnings and profits of the taxable year of the distributing corporation in which the transaction occurs allocable to the controlled corporation shall be included in the computation of the earnings and profits of the first taxable year of the controlled corporation ending after the date of the transaction.

(b) If a distribution or exchange to which section 355 applies is not in pursuance of a plan meeting the requirements of a reorganization as defined in section 368 (a) (1) (D), the earnings and profits of the distributing corporation shall be decreased by the same amount as they would have been if the distributing corporation had transferred the stock of the controlled corporation to a new corporation in a reorganization to which section 368 (a) (1) (D) applied and immediately thereafter distributed the stock of such new corporation. In no case shall the earnings and profits of the controlled corporation immediately after the distribution be less than the amount by which the earnings and profits of the distributing corporation are decreased. Whenever the earnings and profits of the controlled corporation are less than the amount of the decrease in the earnings and profits of the distributing corporation (including a case in which controlled corporation has a deficit) the earnings and profits of the controlled corporation shall be so increased as to equal the amount of such

decrease. On the other hand, if the earnings and profits of the controlled corporation are more than such amount, they shall not be either decreased or increased. In any case in which the entire net worth of the controlled corporation is less than the amount of earnings and profits which would be allocable to it under the first sentence of this paragraph, its earnings and profits shall be equal to its entire net worth. In such a case the earnings and profits of the distributing corporation shall be decreased by an amount equal to the entire net worth of the controlled corporation. As used herein the term "net worth" means the sum of the bases of all the properties plus cash minus all liabilities.

(c) In no case shall any part of a deficit of a distributing corporation within the meaning of section 355 be allocated to a controlled corporation.

§ 1.312-11 Effect on earnings and profits of certain other tax-free exchanges and tax-free distributions. (a)

(1) If property is transferred by one corporation to another corporation within the provisions of section 351, no allocation of earnings and profits shall be made between the transferor and transferee by reason of such transfer. See § 1.312-10 for allocation of earnings and profits upon the distribution of the stock of a controlled corporation in a transaction subject to section 355 or so much of section 356 as relates to section 355.

(2) The following example will illustrate the application of paragraph (a) (1) of this section:

Example. Corporation A transfers half of its assets subject to half of its liabilities to Corporation B in exchange for all of its stock. Such stock is not distributed by Corporation A. No allocation of earnings and profits from Corporation A to Corporation B shall be made.

(b) The general rule provided in section 316 that every distribution is made out of earnings or profits to the extent thereof and from the most recently accumulated earnings or profits does not apply to:

(1) The distribution, in pursuance of a plan of reorganization, by or on behalf of a corporation a party to the reorganization, or in a transaction subject to section 355, to its shareholders—

(i) Of stock or securities in such corporation or in another corporation a party to the reorganization in any taxable year beginning before January 1, 1934, without the surrender by the distributees of stock or securities in such corporation (see section 112 (g) of the Revenue Act of 1932); or

(ii) Of stock (other than preferred stock) in another corporation which is a party to the reorganization without the surrender by the distributees of stock in the distributing corporation if the distribution occurs after October 20, 1951 and is subject to section 112 (b) (11) of the Internal Revenue Code of 1939; or

(iii) Of stock or securities in such corporation or in another corporation a party to the reorganization in any taxable year beginning before January 1, 1939, or on or after such date, in exchange for its stock or securities in a transaction to

which section 112 (b) (3) of the Internal Revenue Code of 1939 was applicable;

(iv) Of stock or securities in such corporation or in another corporation in exchange for its stock or securities in a transaction subject to section 354 or 355, if no gain to the distributees from the receipt of such stock or securities was recognized by law.

(2) The distribution in any taxable year (beginning before January 1, 1939, or on or after such date) of stock or securities, or other property or money, to a corporation in complete liquidation of another corporation, under the circumstances described in section 112 (b) (6) of the Revenue Act of 1936, the Revenue Act of 1938, of the Internal Revenue Code of 1939, or section 332.

(3) The distribution in any taxable year (beginning after December 31, 1939), of stock or securities, or other property or money, in the case of an exchange or distribution described in section 371 of the Internal Revenue Code of 1939 or in section 1081 (relating to exchanges and distributions in obedience to orders of the Securities and Exchange Commission), if no gain to the distributee from the receipt of such stock, securities, or other property or money was recognized by law.

(4) A stock dividend which was not subject to tax in the hands of the distributee because either it did not constitute income to him within the meaning of the sixteenth amendment to the Constitution or because exempt to him under section 115 (f) of the Revenue Act of 1934 or a corresponding provision of a prior Revenue Act, or section 305.

(5) The distribution, in a taxable year of the distributee beginning after December 31, 1931, by or on behalf of an insolvent corporation, in connection with a section 112 (b) (10) reorganization under the Internal Revenue Code of 1939, or in a transaction subject to section 371, of stock or securities in a corporation organized or made use of to effectuate the plan of reorganization, if under section 112 (1) of the Internal Revenue Code of 1939 or section 371 no gain to the distributee from the receipt of such stock or securities was recognized by law.

(c) A distribution described in subparagraph (1), (2), (3), (4), or (5) of paragraph (b) does not diminish the earnings or profits of any corporation. In such cases, the earnings or profits remain intact and available for distribution as dividends by the corporation making such distribution, or by another corporation to which the earnings or profits are transferred upon such reorganization or other exchange. In the case, however, of amounts distributed in liquidation (other than a tax-free liquidation or reorganization described in subparagraph (1), (2), (3), or (5) of paragraph (b)) the earnings or profits of the corporation making the distribution are diminished by the portion of such distribution properly chargeable to earnings or profits accumulated after February 28, 1913, after first deducting from the amount of such distribution the portion thereof allocable to capital account.

(d) For the purposes of this section, the terms "reorganization" and "party to the reorganization" shall, for any taxable year beginning before January 1, 1934, have the meanings assigned to such terms in section 112 of the Revenue Act of 1932; for any taxable year beginning after December 31, 1933, and before January 1, 1936, have the meanings assigned to such terms in section 112 of the Revenue Act of 1934; for any taxable year beginning after December 31, 1935, and before January 1, 1938, have the meanings assigned to such terms in section 112 of the Revenue Act of 1936; for any taxable year beginning after December 31, 1937, and before January 1, 1939, have the meanings assigned to such terms in section 112 of the Revenue Act of 1938; and for any taxable year beginning after December 31, 1938, and ending before June 22, 1954, providing no election is made under section 393 (b) (2) of the Internal Revenue Code of 1954, having the meanings assigned to such terms in section 213 (b) of the Revenue Act of 1939.

§ 1.312-12 Distributions of proceeds of loans guaranteed by the United States. (a)

The provisions of section 312 (j) are applicable with respect to a loan, any portion of which is guaranteed by an agency of the United States Government without regard to the percentage of such loan subject to such guarantee.

(b) The application of section 312 (j) is illustrated by the following example:

Example. Corporation A borrowed \$1,000,000 for the purpose of construction of an apartment house, the cost of which was \$900,000. This loan was guaranteed by an agency of the United States Government. One year after such loan was made and after the completion of construction of the building (but before such corporation had received any income) it distributed \$100,000 cash to its shareholders. The earnings and profits of the taxable year of such corporation are increased (pursuant to section 312 (j)) by \$100,000 immediately prior to such distribution and are decreased \$100,000 immediately after such distribution. Such decrease, however, does not reduce the earnings and profits below zero. Two years later, it has no accumulated earnings and has earnings of the taxable year of \$100,000. Before it has made any payments on the loan, it distributes \$200,000 to its shareholders. The earnings and profits of the taxable year of the corporation (\$100,000) are increased by the excess of the amount of the guaranteed loan, \$100,000. The entire amount of each distribution is treated as a distribution out of earnings and profits and, accordingly, as a taxable dividend.

Definitions; Constructive Ownership of Stock

§ 1.316 Statutory provisions; dividend defined.

Sec. 316. Dividend Defined.—(a) *General rule.* For purposes of this subtitle, the term "dividend" means any distribution of property made by a corporation to its shareholders—

(1) Out of its earnings and profits accumulated after February 28, 1913, or

(2) Out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distribution made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings

and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) *Special rules*—(1) *Certain insurance company dividends.* The definition in subsection (a) shall not apply to the term "dividend" as used in sections 803 (e), 821 (a) (2), 823 (2), and 832 (c) (11) (where the reference is to dividends of insurance companies paid to policyholders.)

(2) *Distributions by personal holding companies.* In the case of a corporation which—

(A) Under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(B) For the taxable year in respect of which the distribution is made under section 563 (b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

§ 1.316-1 Dividends. (a) (1) The term "dividend" for the purpose of subtitle A (except when used in section 803 (e), section 821 (a) (2), section 823 (2), and section 832 (c) (11) where the reference is to dividends of insurance companies paid to policyholders) comprises any distribution of property as defined in section 317 in the ordinary course of business, even though extraordinary in amount, made by a domestic or foreign corporation to its shareholders out of either—

(i) earnings and profits accumulated since February 28, 1913, or

(ii) earnings and profits of the taxable year computed without regard to the amount of the earnings and profits (whether of such year or accumulated since February 28, 1913) at the time the distribution was made.

The earnings and profits of the taxable year shall be computed as of the close of such year, without diminution by reason of any distributions made during the taxable year. For the purpose of determining whether a distribution constitutes a dividend, it is unnecessary to ascertain the amount of the earnings and profits accumulated since February 28, 1913, if the earnings and profits of the taxable year are equal to or in excess of the total amount of the distributions made within such year.

(2) In determining whether a distribution of property, other than money, constitutes a dividend, the fact that the earnings and profits of the distributing corporation are less than the amount of the distribution as determined under section 301 (b) (the fair market value of the property in the case of an individual shareholder), is immaterial.

(3) The rule of (2) above may be illustrated by the following example:

Example. Corporation A, with earnings and profits of \$10,000, distributes property with a basis of \$7,500 and with a fair market value of \$15,000 to an individual shareholder in a distribution to which section 301 applies. The amount taxable to the shareholder as a dividend under section 301 (c) is the entire fair market value of the property distributed.

(b) In the case of a corporation which, under the law applicable to the taxable year in which a distribution is made, is a personal holding company or which, for the taxable year in respect of which a distribution is made under section 563, relating to dividends paid within 2½ months after the close of the taxable year, or section 547, relating to deficiency dividends, or corresponding provisions of a prior income-tax law, was under the applicable law a personal holding company, the term "dividend," in addition to the meaning set forth in the first sentence of section 316, also means a distribution to its shareholders as follows: A distribution within a taxable year of the corporation, or of a shareholder, is a dividend to the extent of the corporation's undistributed personal holding company income (determined under section 545 without regard to distributions under section 316 (b) (2)) for the taxable year in which, or, in the case of a distribution under section 563 or section 547, the taxable year in respect of which, the distribution was made.

(c) The term "dividend" includes any distribution to shareholders to the extent made out of accumulated or current earnings and profits. See, however, section 331 (relating to distributions in complete liquidation), section 346 (relating to distributions in partial liquidation), section 301 (e) relating to distributions by personal service corporations), section 302 (b) (relating to redemptions treated as amounts received from the sale or exchange of stock), section 303 (relating to distributions in redemption of stock to pay death taxes), and section 305 (a) (relating to stock dividends).

(d) The application of section 316 may be illustrated by the following examples:

Example (1). At the beginning of the calendar year 1955, Corporation M had an operating deficit of \$200,000 and the earnings and profits for the year amounted to \$100,000. Beginning on March 16, 1955, the corporation made quarterly distributions of \$25,000 during the taxable year to its shareholders. Each distribution is a taxable dividend in full, irrespective of the actual or the pro rata amount of the earnings and profits on hand at any of the dates of distribution, since the total distributions made during the year (\$100,000) did not exceed the total earnings and profits of the year (\$100,000).

Example (2). At the beginning of the calendar year 1955, Corporation N, a personal holding company, had no accumulated earnings and profits. During that year it made no earnings and profits but, due to the disallowance of certain deductions, its undistributed personal holding company income (determined under section 545 without regard to distributions under section 316 (b) (2)) was \$16,000. It distributed to shareholders on December 15, 1955, \$15,000, and on February 1, 1956, \$1,000, the latter amount being claimed as a deduction under section 563 in its personal holding company schedule for 1955 filed with its return for 1955 on March 15, 1956. Both distributions are tax-

able dividends in full, since they do not exceed the undistributed personal holding company income (determined without regard to such distributions) for 1955, the taxable year in which the distribution of \$15,000 was made and with respect to which the distribution of \$1,000 was made. It is immaterial whether Corporation N is a personal holding company for the taxable year 1956 or whether it had any income for that year.

Example (3). In 1959, a deficiency in personal holding company tax was established against Corporation O for the taxable year 1955 in the amount of \$35,500 based on an undistributed personal holding company income of \$42,000. Corporation O complied with the provisions of section 547 and in December 1959 distributed \$42,000 to its stockholders as "deficiency dividends." The distribution of \$42,000 is a taxable dividend since it does not exceed \$42,000 (the undistributed personal holding company income for 1955, the taxable year with respect to which the distribution was made). It is immaterial whether Corporation O is a personal holding company for the taxable year 1959 or whether it had any income for that year.

Example (4). At the beginning of the taxable year 1955, Corporation P, a personal holding company, had a deficit in earnings and profits of \$200,000. During that year it made earnings and profits of \$55,000. For that year, however, it had an undistributed personal holding company income (determined under section 545 without regard to distributions under section 316 (b) (2)) of \$80,000. During such taxable year it distributed to its shareholders \$100,000. The distribution of \$100,000 is a taxable dividend to the extent of \$80,000, the undistributed personal holding company income, determined without regard to such distribution. No interest shall be allowed or paid in respect of any overpayment of tax resulting from the inclusion in taxable income by any shareholder of his proportionate share of the distribution of \$100,000.

Example (5). If the facts were the same as in example (4) except that Corporation P had earnings and profits for the taxable year 1955 of \$90,000, the distribution of \$100,000 would be a taxable dividend to the extent of \$90,000 since its earnings and profits for that year, \$90,000, exceed \$80,000, the undistributed personal holding company income, determined without regard to such distribution.

§ 1.316-2 Sources of distribution in general. (a) For the purpose of income taxation every distribution made by a corporation is made out of earnings and profits to the extent thereof and from the most recently accumulated earnings and profits. In determining the source of a distribution, consideration should be given first, to the earnings and profits of the taxable year; second, to the earnings and profits accumulated since February 28, 1913, only in the case where, and to the extent that, the distributions made during the taxable year are not regarded as out of the earnings and profits of that year; third, to the earnings and profits accumulated before March 1, 1913, only after all the earnings and profits of the taxable year and all the earnings and profits accumulated since February 28, 1913, have been distributed; and, fourth, to sources other than earnings and profits only after the earnings and profits have been distributed.

(b) If the earnings and profits of the taxable year (computed as of the close of the year without diminution by reason of any distributions made during the year and without regard to the amount

of earnings and profits at the time of the distribution) are sufficient in amount to cover all the distributions made during that year, then each distribution is a taxable dividend. See § 1.316-1. If the distributions made during the taxable year consist only of money and exceed the earnings and profits of such year, then that proportion of each distribution which the total of the earnings and profits of the year bears to the total distributions made during the year shall be regarded as out of the earnings and profits of that year. The portion of each such distribution which is not regarded as out of earnings and profits of the taxable year shall be considered a taxable dividend to the extent of the earnings and profits accumulated since February 28, 1913, and available on the date of the distribution. In any case in which it is necessary to determine the amount of earnings and profits accumulated since February 28, 1913, and the actual earnings and profits to the date of a distribution within any taxable year (whether beginning before January 1, 1936, or, in the case of an operating deficit, on or after that date, cannot be shown, the earnings and profits for the year (or accounting period, if less than a year) in which the distribution was made shall be prorated to the date of the distribution not counting the date on which the distribution was made.

(c) The provisions of the section may be illustrated by the following example:

Example. At the beginning of the calendar year 1955, Corporation M had \$12,000 in earnings and profits accumulated since February 28, 1913. Its earnings and profits for 1955 amounted to \$30,000. During the year it made quarterly cash distributions of \$15,000 each. Of each of the four distributions made, \$7,500 (that portion of \$15,000 which the amount of \$30,000, the total earnings and profits of the taxable year, bears to \$60,000, the total distributions made during the year) was paid out of the earnings and profits of the taxable year; and of the first and second distributions, \$7,500 and \$4,500, respectively, were paid out of the earnings and profits accumulated after February 28, 1913, and before the taxable year, as follows:

Distributions during 1955		Portion out of earnings and profits of the taxable year	Portion out of earnings accumulated since Feb. 28, 1913, and before the taxable year	Taxable amount of each distribution
Date	Amount			
March 10.....	\$15,000	\$7,500	\$7,500	\$15,000
June 10.....	15,000	7,500	4,500	12,000
September 10.....	15,000	7,500	-----	7,500
December 10.....	15,000	7,500	-----	7,500
Total amount taxable as dividends.....	-----	-----	-----	42,000

(d) Any distribution by a corporation out of earnings and profits accumulated before March 1, 1913, or out of increase in value of property accrued before March 1, 1913 (whether or not realized by sale or other disposition, and, if realized, whether before, on, or after March 1, 1913), is not a dividend within the meaning of subtitle A.

(e) A reserve set up out of gross income by a corporation and maintained for the purpose of making good any loss of capital assets on account of depletion or depreciation is not a part of surplus out of which ordinary dividends may be paid. A distribution made from a depletion or a depreciation reserve based upon the cost or other basis of the property will not be considered as having been paid out of earnings and profits, but the amount thereof shall be applied against and reduce the cost or other basis of the stock upon which declared. If such a distribution is in excess of the basis, the excess shall be taxed as a gain from the sale or other disposition of property as provided in section 301 (c) (3) (A). A distribution from a depletion reserve based upon discovery value to the extent that such reserve represents the excess of the discovery value over the cost or other basis for determining gain or loss, is, when received by the shareholders, taxable as an ordinary dividend. The amount by which a corporation's percentage depletion allowance for any year exceeds depletion sustained on cost or other basis, that is, determined without regard to discovery or percentage depletion allowances for the year of distribution or prior years, constitutes a part of the corporation's "earnings and profits accumulated after February 28, 1913," within the meaning of section 316, and, upon distribution to shareholders, is taxable to them as a dividend. A distribution made from that portion of a depletion reserve based upon a valuation as of March 1, 1913, which is in excess of the depletion reserve based upon cost, will not be considered as having been paid out of earnings and profits, but the amount of the distribution shall be applied against and reduce the cost or other basis of the stock upon which declared. See section 301. No distribution, however, can be made from such a reserve until all the earnings and profits of the corporation have first been distributed.

§ 1.317 Statutory provisions; other definitions.

Sec. 317. *Other definitions.*—(a) *Property.* For purposes of this part, the term "property" means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) *Redemption of stock.* For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

§ 1.317-1 *Property defined.* The term "property", for purposes of Part 1 of subchapter C, means any property (including money, securities, and any other property) other than stock, or rights to acquire stock, in the corporation making the distribution.

§ 1.317-2 *Reduction in par or stated value.* For purposes of this subchapter, if a corporation makes a distribution of property accompanying a reduction in the par or stated value of its outstanding stock, the amount distributed shall be

treated as received in a redemption of stock.

§ 1.317-3 *Corporation selling its own stock.* For purposes of this subchapter, if a corporation sells its own stock held as treasury stock, the amount received shall be treated in the same manner as an amount received in exchange for stock which was previously unissued stock. See section 1032.

§ 1.317-4 *Stock and securities.* In general, the term "stock", for purposes of this subchapter, includes all forms and classes of instruments representing the interest of the owners of the equity interest in the corporation as distinguished from instruments representing the claim of persons whose relationship with the corporation is similar to that of creditors, generally referred to as "securities".

§ 1.318 Statutory provisions; constructive ownership of stock.

Sec. 318. *Constructive ownership of stock.*—(a) *General rule.* For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) *Members of family.*—(A) *In general.* An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) His spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance); and

(ii) His children, grandchildren and parents.

(B) *Effect of adoption.* For purposes of subparagraph (A) (ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) *Partnerships, estates, trusts, and corporations.*—(A) *Partnerships and estates.* Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as being owned by the partnership or estate.

(B) *Trusts.* Stock owned, directly or indirectly, by or for a trust shall be considered as being owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust. Stock owned, directly or indirectly, by or for a beneficiary of a trust shall be considered as being owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of the preceding sentence, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property. Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of Part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as being owned by such person; and such trust shall be treated as owning the stock owned, directly or indirectly, by or for that person. This subparagraph shall not apply with respect to any employee's trust described in section 401 (a) which is exempt from tax under section 501 (a).

(C) *Corporations.* If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, then—

(i) Such person shall be considered as owning the stock owned, directly or indirect-

ly, by or for that corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation; and

(ii) Such corporation shall be considered as owning the stock owned, directly or indirectly, by or for that person.

(3) *Options.* If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) *Constructive ownership as actual ownership—(A) In general.* Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), or (3) shall, for purposes of applying paragraph (1), (2), or (3), be treated as actually owned by such person.

(B) *Members of family.* Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be treated as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) *Option rule in lieu of family rule.* For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (3), it shall be considered as owned by him under paragraph (3).

(b) *Cross references.* For provisions to which the rules contained in subsection (a) apply, see—

(1) Section 302 (relating to redemption of stock);

(2) Section 304 (relating to redemption by related corporations);

(3) Section 306 (b) (1) (A) (relating to disposition of section 306 stock);

(4) Section 334 (b) (3) (C) (relating to basis of property received in certain liquidations of subsidiaries); and

(5) Section 382 (a) (3) (relating to special limitations on net operating loss carryovers).

§ 1.318-1 *Constructive ownership of stock—General rule.* For the purposes of those provisions of subchapter C to which the rules contained in section 318 (a) are expressly made applicable, stock owned by a taxpayer in a corporation includes stock of the corporation constructively owned by the taxpayer. The area of constructive ownership includes members of the family, persons having interests in partnerships, estates, trusts, and corporations, such partnerships, estates, trusts, and corporations, and stock held under an option.

§ 1.318-2 *Application of general rule.* (a) The application of section 318 (a), relating to members of a family, may be illustrated by the following examples:

Example. An individual, H, his wife, W, his son, S, and his grandson (S's son), G, own the 100 outstanding shares of stock of a corporation, each owning 25 shares. H, W, and S are each considered as owning 100 shares. G is considered as owning only 50 shares, that is, his own and his father's.

(b) The application of section 318 (a) relating to partnerships, estates, trusts and corporations may be illustrated by the following examples:

Example (1). A, an individual, has a 50 percent interest in a partnership. The partnership owns 50 of the 100 outstanding shares of stock of a corporation, the remaining 50 shares being owned by A. The partnership

is considered as owning 100 shares. A is considered as owning 75 shares.

Example (2). A testamentary trust owns 25 of the outstanding 100 shares of stock of a corporation. A, an individual, who holds a vested remainder in the trust having a value, computed actuarially equal to 4 percent of the value of the trust property, owns the remaining 75 shares. Since the interest of A in the trust is a vested interest rather than a contingent interest (whether or not remote), the trust is considered as owning 100 shares. A is considered as owning 76 shares.

Example (3). The facts are the same as in (2), above, except that A's interest in the trust is a contingent remainder. A is considered as owning 76 shares. However, since A's interest in the trust is a remote contingent interest, the trust is not considered as owning any of the shares owned by A.

Example (4). A and B, unrelated individuals, own 70 percent and 30 percent, respectively, in value of the stock of Corporation M. Corporation M owns 50 of the 100 outstanding shares of stock of Corporation O, the remaining 50 shares being owned by A. Corporation M is considered as owning 100 shares of Corporation O, and A is considered as owning 85 shares.

Example (5). A decedent's estate owns 50 of the 100 outstanding shares of stock of Corporation X. The remaining shares are owned by three unrelated individuals, A, B, and C, who together own the entire interest in the estate. A owns 12 shares of stock of Corporation X directly and is entitled to 50 percent of the estate in fee. B owns 18 shares directly and has a life estate in the remaining 50 percent of the estate. C owns 20 shares directly and also owns the remainder interest after B's life estate. Under these circumstances, the estate is considered as owning 80 shares of the stock of Corporation X; 50 shares directly, 12 shares constructively through A, and 18 shares constructively through B. A is considered as owning 46 shares of the stock of Corporation X; 12 shares directly and 34 shares constructively (50 percent of the 50 shares owned directly by the estate and 50 percent of the 18 shares owned constructively by the estate through B). B is considered as owning 49 shares of the stock of Corporation X; 18 shares directly and 31 shares constructively (50 percent of the 50 shares owned directly by the estate and 50 percent of the 12 shares owned constructively by the estate through A). C is considered as owning 20 shares directly and no shares constructively. C is not considered a beneficiary of the estate under section 318 (a) since he has no direct present interest in the income produced by the property held by the estate.

(c) The application of section 318 (a) relating to options may be illustrated by the following example:

Example. A and B, unrelated individuals, own all of the 100 outstanding shares of stock of a corporation, each owning 50 shares. A has an option to acquire 25 of B's shares and has an option to acquire a further option to acquire the remaining 25 of B's shares. A is considered as owning the entire 100 shares of stock of the corporation.

§ 1.318-3 *Constructive ownership as actual ownership.* (a) Except as provided in section 318 (a) (4) (B), section 1.318-4, and subsection (b) of this section, stock constructively owned by a person by reason of the application of paragraph (1), (2), or (3) of section 318 (a) is, for purposes of applying paragraph (1), (2), or (3), treated as actually owned by such person.

(b) In applying section 318 (a) to determine the stock ownership of any person for any one purpose—

(1) A corporation shall not be considered to own its own stock by reason of section 318 (a) (2) (C) (ii),

(2) In any case in which an amount of stock owned by any person may be included in the computation more than one time—

(i) Such stock shall be used in such computation only once, and

(ii) Such stock shall be used in such computation in the manner in which it will impute to the person concerned the largest total stock ownership, and

(3) In determining the 50 percent requirement of section 318 (a) (2) (C) all of the stock owned actually and constructively by the person concerned shall be aggregated.

(c) The application of this section may be illustrated by the following examples:

Example (1). H, an individual, owns all of the stock of Corporation A. Corporation A is not considered to own the stock owned by H in Corporation A.

Example (2). A owns 40 percent of the Brown Corporation and 50 percent of the Green Corporation. Under section 318 (a) (2) (C), the stock ownership of A in the Brown Corporation will be limited to 40 percent of such stock. The amount of stock of the Brown Corporation owned constructively by A, 20 percent (50 percent of the 40 percent of the Brown Corporation considered to be owned by the Green Corporation under section 318 (a) (2) (C) (ii)) will not be added to the stock actually owned by A since, under (b) (2) (i), above, the same stock shall not be taken into account twice in the same computation, and pursuant to (b) (2) (ii), above, the amount of stock must be computed as if actually owned by A since this will impute to him the largest total stock ownership.

Example (3). The same result will follow if in example (2) above A is a fifty percent beneficiary of a trust or estate or a fifty percent partner in a partnership rather than a 50 percent shareholder of the Green Corporation. Where two unrelated individuals, A and B, own stock of a corporation, and are also the beneficiaries of a trust or estate or the members of a partnership which owns stock of the corporation, then in determining the stock constructively owned by A, the said trust, estate, or partnership is considered as actually owning the stock owned by B.

Example (4). H, an individual, his wife, W, and his son, S, each own one-third of the stock of the Green Corporation. For purposes of determining the amount of stock owned by H, W, or S for the purpose of section 318 (a) (2) (C), the amount of stock held by the other members of the family shall be added pursuant to (b) (3) above in applying the 50 percent requirement of such section. H, W, or S, as the case may be, is for this purpose deemed to own 100 percent of the stock of the Green Corporation.

Example (5). A and B, unrelated individuals, own 70 percent and 30 percent, respectively, of the stock of Corporation M. A, B and Corporation M all own stock of Corporation O. Since B owns less than 50 percent in value of the stock of Corporation M, neither B nor Corporation M constructively owns the stock of Corporation O owned by the other. However, for the purpose of sections 304 (b) (1), 304 (c) (2), and 382 (a) (3), section 318 (a) (2) (C) is applied without regard to the 50 percent limitation contained therein, and for such purposes, B constructively owns the stock of Corporation O owned by Corporation M, and Corporation M constructively owns the stock of Corporation O owned by B. Therefore, for such purpose, in determining the stock constructively owned by A, Corpo-

ration M is treated as actually owning the stock of Corporation O owned by B.

(d) For the purpose of section 318 (a) (2) (B) stock owned by a trust will be considered as being owned by its beneficiaries only to the extent of the interest of such beneficiaries in the trust. Accordingly, the interest of income beneficiaries, remainder beneficiaries, and other beneficiaries will be computed on an actuarial basis. Thus, if a trust owns 100 percent of the stock of Corporation A, and if, on an actuarial basis, W's life interest in the trust is 15 percent, Y's life interest is 25 percent, and Z's remainder interest is 60 percent, under this provision W will be considered to be the owner of 15 percent of the stock of Corporation A, Y will be considered to be the owner of 25 percent of such stock, and Z will be considered to be the owner of 60 percent of such stock.

§ 1.318-4 Constructive family ownership. An exception concerning the treatment of constructive ownership as actual ownership is provided in section 318 (a) (4) (B) with respect to stock constructively owned by reason of ownership by a member of a family. This exception is intended to make clear that unless the stock is stated to be directly attributable to the individual whose stock ownership is in question, the constructive ownership rules of section 318 (a) (1) are not applicable. Thus, for example, if F and his two sons, A and B, each own one-third of the stock of a corporation, under section 318 (a) (1), A is treated as owning constructively the stock owned by his father but is not treated as owning the stock owned by B. Section 318 (a) (4) (B) prevents the attribution of the stock of one brother through the father to the other brother, an attribution beyond the scope of section 318 (a) (1) directly.

PART II. Corporate liquidations. The following rules are to be applied in connection with the provisions of Part II, sections 331 through 346. For rules relating to the effective date of this part and to the application of the rules of this part to years subject to the Internal Revenue Code of 1939, see Part VI.

CORPORATE LIQUIDATIONS

EFFECTS ON RECIPIENTS

§ 1.331 Statutory provisions; gain or loss to shareholders in corporate liquidations.

Sec. 331. Gain or loss to shareholders in corporate liquidations—(a) General rule—(1) Complete liquidations. Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(2) Partial liquidations. Amounts distributed in partial liquidation of a corporation (as defined in section 346) shall be treated as in part or full payment in exchange for the stock.

(b) Nonapplication of section 301. Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property in partial or complete liquidation.

(c) Cross references. (1) For general rule for determination of the amount of gain or loss to the distributee, see section 1001.

(2) For general rule for determination of the amount of gain or loss recognized, see section 1002.

§ 1.331-1 Corporate liquidations. (a) Section 331 contains rules governing the extent to which gain or loss is recognized to a shareholder receiving a distribution in complete or partial liquidation of a corporation. Under section 331 (a) (1), it is provided that amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock. Under section 331 (a) (2), it is provided that amounts distributed in partial liquidation of a corporation shall be treated as in full or part payment in exchange for the stock. For this purpose, the term "partial liquidation" shall have the meaning ascribed in section 346. If section 331 is applicable to the distribution of property by a corporation, section 301 (relating to the effects on a shareholder of distributions of property) has no application.

(b) The gain or loss to a shareholder from a distribution in partial or complete liquidation is to be determined under section 1001 by comparing the amount of the distribution with the cost or other basis of the stock. The gain or loss will be recognized to the extent provided in section 1002 and will be subject to the provisions of sections 1201-1223. A liquidation which is followed by a reincorporation or which is preceded by an incorporation of part of the assets of the liquidating corporation may, however, have the effect of the distribution of a dividend or of a transaction in which gain is recognized only to the extent of "other property". See sections 301 and 356.

(c) The provisions of this section may be illustrated by the following example:

Example. A, an individual who makes his income tax returns on the calendar year basis, owns 20 shares of stock of the P Corporation, a domestic corporation, 10 shares of which were acquired in 1951 at a cost of \$1,500 and the remainder of 10 shares in December 1954 at a cost of \$2,900. He receives in April 1955 a distribution of \$250 per share in complete liquidation, or \$2,500 on the 10 shares acquired in 1951, and \$2,500 on the 10 shares acquired in December 1954. The gain of \$1,000 on the shares acquired in 1951 is a long-term capital gain to be treated as provided in sections 1201 through 1223. The loss of \$400 on the shares acquired in 1954 is a short-term capital loss to be treated as provided in sections 1201 through 1223.

§ 1.332 Statutory provisions; complete liquidations of subsidiaries.

Sec. 332. Complete liquidations of subsidiaries—(a) General rule. No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies. For purposes of subsection (a), a distribution shall be considered to be in complete liquidation only if—

(1) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either

(2) The distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) Such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary or his delegate may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Special rule for indebtedness of subsidiary to parent. If—

(1) A corporation is liquidated and subsection (a) applies to such liquidation, and

(2) On the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80 percent stock ownership requirements specified in subsection (b),

then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness.

§ 1.332-1 Distributions in liquidation of subsidiary corporation—General. Under the general rule prescribed by section 331 for the treatment of distributions in liquidation of a corporation, amounts received by one corporation in complete liquidation of another corporation are treated as in full payment in exchange for stock in such other corporation, and

gain or loss from the receipt of such amounts is to be determined as provided in section 1001. Section 332 excepts from the general rule property received, under certain specifically described circumstances, by one corporation as a distribution in complete liquidation of the stock of another corporation and provides for the nonrecognition of gain or loss in those cases which meet the statutory requirements. Section 367 places a limitation on the application of section 332 in the case of foreign corporations. See section 334 (b) for the basis for determining gain or loss from the subsequent sale of property received upon complete liquidations such as described in this section. See section 453 (d) (4) (A) relative to distribution of installment obligations by subsidiary.

§ 1.332-2 Requirements for nonrecognition of gain or loss. (a) The nonrecognition of gain or loss is limited to the receipt of such property by a corporation which is the actual owner of stock (in the liquidating corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends). The recipient corporation must have been the owner of the specified amount of such stock on the date of the adoption of the plan of liquidation and have continued so to be at all times until the receipt of the property. If the recipient corporation does not continue qualified with respect to the ownership of stock of the liquidating corporation and if the failure to continue qualified occurs at any time prior to the completion of the transfer of all the property, the provisions for the nonrecognition of gain or loss do not apply to any distribution received under the plan.

(b) Section 332 applies only to those cases in which the recipient corporation receives at least partial payment for the stock which it owns in the liquidating corporation. If section 332 is not applicable, see section 165 (g) relative to allowance of losses on worthless securities.

(c) To constitute a distribution in complete liquidation within the meaning of section 332, the distribution must be (1) made by the liquidating corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or (2) one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation. It is essential that a status of liquidation exist at the time the first distribution is made under the plan and that such status continue to the date of dissolution of the corporation. A status of liquidation exists when the corporation ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its shareholders. A liquidation may be completed prior to the actual dissolution of the liquidating corporation but no liquidation is completed until the liquidating corporation and the receiver or trustees

in liquidation are finally divested of all the property (both tangible and intangible). (See § 39.22 (a)-20 of Regulations 118 (26 CFR (1939), 1953 revision, § 39.22 (a)-20.)

(d) If a transaction constitutes a distribution in complete liquidation within the meaning of the Internal Revenue Code of 1954 and satisfies the requirements of section 332, it is not material that it is otherwise described under the local law. If a liquidating corporation distributes all of its property in complete liquidation and if pursuant to the plan for such complete liquidation a corporation owning the specified amount of stock in the liquidating corporation receives property constituting amounts distributed in complete liquidation within the meaning of the Code and also receives other property attributable to shares not owned by it, the transfer of the property to the recipient corporation shall not be treated, by reason of the receipt of such other property, as not being a distribution (or one of a series of distributions) in complete cancellation or redemption of all of the stock of the liquidating corporation within the meaning of section 332, even though for purposes of those provisions relating to corporate reorganizations the amount received by the recipient corporation in excess of its ratable share is regarded as acquired upon the issuance of its stock or securities in a tax-free exchange as described in section 361 and the cancellation or redemption of the stock not owned by the recipient corporation is treated as occurring as a result of a tax-free exchange described in section 354.

(e) The application of these rules may be illustrated by the following example:

Example. On September 1, 1954, the M Corporation had outstanding capital stock consisting of 3,000 shares of common stock, par value \$100 a share, and 1,000 shares of preferred stock, par value \$100 a share, which preferred stock was limited and preferred as to dividends and had no voting rights. On that date, and thereafter until the date of dissolution of the M Corporation, the O Corporation owned 2,500 shares of common stock of the M Corporation. By statutory merger consummated on October 1, 1954, pursuant to a plan of liquidation adopted on September 1, 1954, the M Corporation was merged into the O Corporation, the O Corporation under the plan issuing stock which was received by the holders of the stock of the M Corporation. The receipt by the O Corporation of the properties of the M Corporation is a distribution received by the O Corporation in complete liquidation of the M Corporation within the meaning of section 332, and no gain or loss is recognized as the result of the receipt of such properties.

§ 1.332-3 Liquidations completed within one taxable year. If in a liquidation completed within one taxable year pursuant to a plan of complete liquidation, distributions in complete liquidation are received by a corporation which owns the specified amount of stock in the liquidating corporation and which continues qualified with respect to the ownership of such stock until the transfer of all the property within such year is completed (see § 1.332-2 (a)), then no gain or loss shall be recognized with respect to the distributions received by the recipient corporation. In such

case no waiver or bond is required of the recipient corporation under section 332.

§ 1.332-4 Liquidations covering more than one taxable year. (a) If the plan of liquidation is consummated by a series of distributions covering a period of more than one taxable year, the nonrecognition of gain or loss with respect to the distributions in liquidation shall, in addition to the requirements of § 1.332-2, be subject to the following requirements:

(1) In order for the distribution in liquidation to be brought within the exception provided in section 332 to the general rule for computing gain or loss with respect to amounts received in liquidation of a corporation, the entire property of the corporation shall be transferred in accordance with a plan of liquidation, which plan shall include a statement showing the period within which the transfer of the property of the liquidating corporation to the recipient corporation is to be completed. The transfer of all the property under the liquidation must be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan.

(2) For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation shall, at the time of filing its return, file with the district director of internal revenue a waiver of the statute of limitations on assessment. The waiver shall be executed on such form as may be prescribed by the Commissioner and shall extend the period of assessment of all income and profits taxes for each such year to a date not earlier than one year after the last date of the period for assessment of such taxes for the last taxable year in which the transfer of the property of such liquidating corporation to the controlling corporation may be completed in accordance with section 332. Such waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to insure the assessment and collection of the correct tax liability for each year within the period of liquidation.

(3) For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation may be required to file a bond, the amount of which shall be fixed by the district director of internal revenue. The bond shall contain all terms specified by the Commissioner, including provisions unequivocally assuring prompt payment of the excess of income and profits taxes (plus penalty, if any, and interest) as computed by the district director without regard to the provisions of sections 332 and 334 (b) over such taxes computed with regard to such provisions, regardless of whether such excess may or may not be made the subject of a notice of deficiency under section 6212 and regardless of whether it may or may not be assessed. Any bond required under section 332 shall have such surety or sureties as the Commissioner may require. However, see 6 U. S. C. 15, providing that where a bond is required

by law or regulations, in lieu of surety or sureties there may be deposited bonds or notes of the United States. Only surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds will be approved as sureties. The bonds shall be executed in triplicate so that the Commissioner, the taxpayer, and the surety or the depository may each have a copy. On and after September 1, 1953, the functions of the Commissioner with respect to such bonds shall be performed by the district director of internal revenue for the internal revenue district in which the return was filed and any bond filed on or after such date shall be filed with such district director.

(b) Pending the completion of the liquidation, if there is a compliance with subparagraphs (1), (2), and (3) of paragraph (a) of this section and § 1.332-2 with respect to the nonrecognition of gain or loss, the income and profits tax liability of the recipient corporation for each of the years covered in whole or in part by the liquidation shall be determined without the recognition of any gain or loss on account of the receipt of the distributions in liquidation. In such determination, the basis of the property or properties received by the recipient corporation shall be determined in accordance with section 334 (b). However, if the transfer of the property is not completed within the three-year period allowed by section 332 or if the recipient corporation does not continue qualified with respect to the ownership of stock of the liquidating corporation as required by that section, gain or loss shall be recognized with respect to each distribution and the tax liability for each of the years covered in whole or in part by the liquidation shall be recomputed without regard to the provisions of section 332 or section 334 (b) and the amount of any additional tax due upon such recomputation shall be promptly paid.

§ 1.332-5 *Distributions in liquidation as affecting minority interests.* Upon the liquidation of a corporation in pursuance of a plan of complete liquidation, the gain or loss of minority shareholders shall be determined without regard to section 332, since it does not apply to that part of distributions in liquidation received by minority shareholders.

§ 1.332-6 *Records to be kept and information to be filed with return.* (a) Permanent records in substantial form shall be kept by every corporation receiving distributions in complete liquidation within the exception provided in section 332 showing the information required by this section to be submitted with its return. The plan of liquidation must be adopted by each of the corporations parties thereto; and the adoption must be shown by the acts of its duly constituted responsible officers, and appear upon the official records of each such corporation.

(b) For the taxable year in which the liquidation occurs, or, if the plan of liquidation provides for a series of distributions over a period of more than one year, for each taxable year in which a

distribution is received under the plan the recipient must file with its return a complete statement of all facts pertinent to the nonrecognition of gain or loss, including—

(1) A certified copy of the plan for complete liquidation, and of the resolutions under which the plan was adopted and the liquidation was authorized, together with a statement under oath showing in detail all transactions incident to, or pursuant to, the plan.

(2) A list of all the properties received upon the distribution, showing the cost or other basis of such properties to the liquidating corporation at the date of distribution and the fair market value of such properties on the date distributed.

(3) A statement of any indebtedness of the liquidating corporation to the recipient corporation on the date the plan of liquidation was adopted and on the date of the first liquidating distribution. If any such indebtedness was acquired at less than face value, the cost thereof to the recipient corporation must also be shown.

(4) A statement as to its ownership of all classes of stock of the liquidating corporation (showing as to each class the number of shares and percentage owned and the voting power of each share) as of the date of the adoption of the plan of liquidation, and at all times since, to and including the date of the distribution in liquidation. The cost or other basis of such stock and the date or dates on which purchased must also be shown.

§ 1.332-7 *Indebtedness of subsidiary to parent.* If section 332 (a) is applicable to the receipt of the subsidiary's property in complete liquidation, then no gain or loss shall be recognized to the subsidiary upon the transfer of such properties even though some of the properties are transferred in satisfaction of the subsidiary's indebtedness to its parent. However, any gain or loss realized by the parent corporation on such satisfaction of indebtedness, shall be recognized to the parent corporation at the time of the liquidation. For example, if the parent corporation purchased its subsidiary's bonds at a discount and upon liquidation of the subsidiary the parent corporation receives payment for the face amount of such bonds, gain shall be recognized to the parent corporation. Such gain shall be measured by the difference between the cost or other basis of the bonds to the parent and the amount received in payment of the bonds.

§ 1.333 *Statutory provisions; election as to recognition of gain in certain liquidations.*

Sec. 333. *Election as to recognition of gain in certain liquidations.*—(a) *General rule.* In the case of property distributed in complete liquidation of a domestic corporation (other than a collapsible corporation to which section 341 (a) applies), if—

(1) The liquidation is made in pursuance of a plan of liquidation adopted on or after June 22, 1954, and

(2) The distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the

liquidation occurs within some one calendar month,

then in the case of each qualified electing shareholder (as defined in subsection (c)) gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subsections (e) and (f).

(b) *Excluded corporation.* For purposes of this section, the term "excluded corporation" means a corporation which at any time between January 1, 1954, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(c) *Qualified electing shareholders.* For purposes of this section, the term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subsection (a) has been made and filed in accordance with subsection (d), but—

(1) In the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

(2) In the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(d) *Making and filing of elections.* The written elections referred to in subsection (c) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Secretary or his delegate. The filing must be within 30 days after the date of the adoption of the plan of liquidation.

(e) *Noncorporate shareholders.* In the case of a qualified electing shareholder other than a corporation—

(1) There shall be recognized, and treated as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

(2) There shall be recognized, and treated as short-term or long-term capital gain, as the case may be, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1953, exceeds his ratable share of such earnings and profits.

(f) *Corporate shareholders.* In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized

only to the extent of the greater of the two following—

(1) The portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after December 31, 1953; or

(2) Its ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

§ 1333-1 Corporate liquidation in some one calendar month—(a) *In general.* Section 333 provides a special rule, in the case of certain specifically described complete liquidations of domestic corporations (other than collapsible corporations to which section 341 (a) applies) occurring within some one calendar month, for the treatment of gain on the shares of stock owned by qualified electing shareholders at the time of the adoption of the plan of liquidation. The effect of such section is in general to postpone the recognition of that portion of a qualified electing shareholder's gain on the liquidation which would otherwise be recognized and which is attributable to appreciation in the value of certain corporate assets unrealized by the corporation at the time such assets are distributed in complete liquidation. Only qualified electing shareholders are entitled to the benefits of section 333. The determination of who is a qualified electing shareholder is to be made under section 333 (c). For the basis of property received on such liquidations, see section 334 (c).

(b) *Type of liquidation.* (1) The liquidation must be in pursuance of a plan of liquidation adopted on or after June 22, 1954. The plan must be adopted before the first distribution under the liquidation occurs. The 1954 Code requires that the transfer of all the property, both tangible and intangible, of the corporation to its shareholders shall occur entirely within some one calendar month. This requirement will be considered to have been complied with if cash is set aside under arrangements for the payment, after the close of such month, of unascertained or contingent liabilities and expenses, and such arrangements are made in good faith and the amount set aside is reasonable. It is not necessary that the month in which the transfer occurs must fall within the taxable or calendar year in which the plan of liquidation is adopted. Though it is not necessary that the corporation dissolve in the month of liquidation, it is essential that a status of liquidation exist at the time the first distribution is made under the plan and that such status continue to the date of dissolution of the corporation. A status of liquidation exists when the corporation ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its shareholders.

(2) If a transaction constitutes a distribution in complete liquidation within the meaning of the 1954 Code and satisfies the requirements of section 333, it is immaterial that it is otherwise described under the local law.

§ 1333-2 Qualified electing shareholder. (a) No corporate shareholder may be a qualified electing shareholder if at any time between January 1, 1954 and the date of the adoption of the plan of liquidation, both dates inclusive, it is the owner of stock of the liquidating corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote upon the adoption of the plan of liquidation. All other shareholders are divided into two groups for the purpose of determining whether they are qualified electing shareholders: (1) shareholders other than corporations, and (2) corporate shareholders.

(b) Any shareholder of either of such two groups, whether or not the stock he owns is entitled to vote on the adoption of the plan of liquidation, is a qualified electing shareholder if:

(1) His written election to be governed by the provisions of section 333, which cannot be withdrawn or revoked, has been made and filed as prescribed in § 1333-3; and

(2) Like elections have been made and filed by owners of stock possessing at least 80 percent of the total combined voting power of all classes of stock owned by shareholders of the same group at the time of, and entitled to vote upon, the adoption of the plan of liquidation, whether or not the shareholders making such elections actually realize gain upon the cancellation or redemption of such stock upon the liquidation.

(c) The application of this section may be illustrated by the following example:

Example. The R Corporation has outstanding 20 shares of common stock on July 1, 1954, at the time of the adoption of a plan of liquidation within the provisions of section 333, each entitled to one vote upon the adoption of such plan of liquidation. At that time ten of such shares are owned by the S Corporation, two each by the X Corporation and the Y Corporation, one by the Z Corporation, and one each by A, B, C, D, and E, individuals. There are also outstanding at such time two shares of preferred stock, not entitled to vote on liquidation, one share being owned by P, an individual, and one share by the P Corporation. The S Corporation, being a corporate shareholder and the owner of 50 percent of the voting stock, may not be a qualified electing shareholder under any circumstances. In order for any other corporate shareholder to be a qualified electing shareholder, it is necessary that the X Corporation and the Y Corporation file their written elections to be governed by section 333. If this is done, the P Corporation will also be a qualified electing shareholder if it has filed a like election. Similarly, in the case of the individual shareholders, some combination of four of the individual holders of the common stock must have filed their written elections, before any individual shareholder may be considered a qualified electing shareholder, but if this is done, P will also be a qualified electing shareholder if he has filed a like election.

(d) An election to be governed by the provisions of section 333 relates to the

treatment of gain realized upon the cancellation or redemption of stock upon liquidation. Such election, therefore, can be made only by or on behalf of the person by whom gains, if any, will be realized. Thus, the shareholder who may make such election must be the actual owner of stock and not a mere record holder, such as a nominee.

(e) A shareholder is entitled to make an election relative to the gain only on stock owned by him at the time of the adoption of the plan of liquidation. The election is personal to the shareholder making it and does not follow such stock into the hands of a transferee.

§ 1333-3 Making and filing of written elections. An election to be governed by section 333 shall be made on Form 964 (revised) in accordance with the instructions printed thereon and with this section. The original and one copy shall be filed by the shareholder with the district director of internal revenue with whom the final income tax return of the corporation will be filed. The elections must be filed within 30 days after the adoption of the plan of liquidation. Under no circumstances shall section 333 be applicable to any shareholders who fail to file their elections within the 30-day period prescribed. An election shall be considered as timely filed if it is placed in the mail on or before midnight of the 30th day after the adoption of the plan of liquidation, as shown by the postmark on the envelope containing the written election or as shown by other available evidence of the mailing date. Another copy shall be attached to and made a part of the shareholder's income tax return for his taxable year in which the transfer of all the property under the liquidation occurs.

§ 1333-4 Treatment of gain—(a) *Computation of gain.* As in the case of shareholders generally, amounts received by qualified electing shareholders are treated as in full payment in exchange for their stock, as provided in section 331 and gain from the receipt of such amounts is determined as provided in section 1001. Gain or loss must be computed separately on each share of stock owned by a qualified electing shareholder at the time of the adoption of the plan of liquidation. The limited recognition and special treatment accorded by section 333 applies only to the gain on such shares of stock upon which gain was realized and not to net gain computed by setting off losses realized on some shares against gain on others. Since section 333 applies only to gain recognized, losses realized on the liquidation will be allowable only in the year of liquidation even though Forms 964 (revised) have been filed by those shareholders who realize only losses. Such filings may be necessary to fulfill the 80 percent requirement (under section 332 (b)) so that these shareholders who realize gain may qualify under this section.

(b) *Recognition of gain.* Pursuant to section 333 only so much of the gain on each share of stock owned by a qualified electing shareholder at the time of the adoption of the plan of liquidation is

recognized as does not exceed the greater of the following:

(1) Such share's ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, computed as of the last day of the month of liquidation, without diminution by reason of distributions made during such month, and including in such computation all items of income and expense accrued up to the date on which the transfer of all the property under the liquidation is completed; or

(2) Such share's ratable share of the sum of the amount of money received by such shareholder on shares of the same class and the fair market value of all the stock or securities so received which were acquired by the liquidating corporation after December 31, 1953. The mere replacement after December 31, 1953 of lost or destroyed certificates or instruments acquired on or before December 31, 1953, or the mere conversion of certificates or instruments into certificates or instruments of larger or smaller denominations will not constitute an acquisition within the meaning of the phrase "acquired after December 31, 1953." Nor will such an acquisition result from the issuance after December 31, 1953 of certificates of stock in connection with a subscription made and accepted on or before December 31, 1953.

(c) *Treatment of recognized gain.* (1) In the case of a qualified electing shareholder other than a corporation, that part of the recognized gain on a share of stock owned at the time of the adoption of the plan of liquidation which is not in excess of his ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, determined as provided in section 333 (e) (1), is treated as a dividend. It retains its character as a dividend for all tax purposes. The remainder of the gain which is recognized is treated as a short-term or long-term capital gain, as the case may be. In the case of a qualified electing shareholder which is a corporation, the entire amount of the gain which is recognized is treated as a short-term or long-term capital gain, as the case may be.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. The X Corporation has only one class of stock outstanding, owned in equal amounts by three shareholders. The basis of the stock owned by each shareholder is \$50, each having bought his stock in a single block prior to the date of the adoption of a plan of liquidation conforming to the requirements of section 333. One of such shareholders is an individual and two are corporations and all are qualified electing shareholders. The X Corporation has earnings and profits accumulated after February 28, 1913 (computed as provided in section 333), of \$60, its assets consisting of property (other than stock or securities acquired after December 31, 1953, and money) with a fair market value of \$240, cash of \$75, and stock and securities acquired after December 31, 1953, with a fair market value of \$90, all of which assets are distributed in October 1954, to the shareholders pro rata in complete liquidation of the corporation, as provided in section 333. Each shareholder, therefore, receives, in cash and property, \$135 and his

gain is \$85. In the case of each shareholder, \$55 of this gain is recognized since such amount represents the sum of the cash received by him and the fair market value of the stock and securities received by him which were acquired by the X Corporation after December 31, 1953, and is greater than his ratable share of the earnings and profits (\$20). In the case of the corporate shareholders this amount is treated as capital gain. In the case of the individual shareholder, however, \$20, being the amount of the shareholder's ratable share of the earnings and profits, is treated as a dividend, and \$35, being the difference between the shareholder's ratable share of the earnings and profits and the sum of the cash and stock and securities received by him, is recognized and treated as a short-term or long-term capital gain, as the case may be. The remainder of each shareholder's gain, \$30, is not recognized. If the basis of each shareholder's stock had been \$100, instead of \$50, the corporate shareholders would be taxed on only \$35 as capital gain and the individual shareholder on \$20 as a dividend but only on \$15 as a capital gain, since the total amount taxed is limited by the amount of gain realized by the shareholder upon the cancellation or redemption of his stock.

§ 1.333-5 *Records to be kept and information to be filed with return.* (a) Permanent records in substantial form shall be kept by every qualified electing shareholder receiving distributions in complete liquidation of a domestic corporation. Such shareholder must file with his income tax return for his taxable year in which the liquidation occurs a statement of all facts pertinent to the recognition and treatment of the gain realized by him upon the shares of stock owned by him at the time of the adoption of the plan of liquidation, including:

(1) A statement of his stock ownership in the liquidating corporation as of the date of the distribution, showing the number of shares of each class owned on such date and the cost or other basis of each such share;

(2) A list of all the property, including money, received upon the distribution, showing the fair market value of each item of such property other than money on the date distributed and stating what items, if any, consist of stock or securities acquired by the liquidating corporation after December 31, 1953.

(3) A statement of his ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, computed without diminution by reason of distributions made during the month of liquidation; and

(4) A copy of such shareholder's written election to be governed by the provisions of section 333. (See § 1.333-3.)

(b) For information to be filed by the liquidating corporation, see section 6043.

§ 1.334 *Statutory provisions; corporate liquidations; basis of property received in liquidations.*

Sec. 334. *Basis of property received in liquidations.*—(a) *General rule.* If property is received in a distribution in partial or complete liquidation (other than a distribution to which section 333 applies), and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) *Liquidation of subsidiary.*—(1) *In general.* If property is received by a corporation

in a distribution in complete liquidation of another corporation (within the meaning of section 332 (b)), then, except as provided in paragraph (2), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which section 332 (c) applies, and if paragraph (2) of this subsection does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(2) *Exception.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of section 332 (b)), and if—

(A) The distribution is pursuant to a plan of liquidation adopted—

(i) On or after June 22, 1954, and

(ii) Not more than 2 years after the date of the transaction described in subparagraph (B) (or, in the case of a series of transactions, the date of the last such transaction); and

(B) Stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in paragraph (3)) during a period of not more than 12 months,

then the basis of the property in the hands of the distributee shall be the adjusted basis of the stock with respect to which the distribution was made. For purposes of the preceding sentence, under regulations prescribed by the Secretary or his delegate, proper adjustment in the adjusted basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation; for any money received, for any liabilities assumed or subject to which the property was received, and for other items.

(3) *Purchase defined.* For purposes of paragraph (2) (B), the term "purchase" means any acquisition of stock, but only if—

(A) The basis of the stock in the hands of the distributee is not determined (i) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (ii) under section 1014 (a) (relating to property acquired from a decedent).

(B) The stock is not acquired in an exchange to which section 351 applies, and

(C) The stock is not acquired from a person the ownership of whose stock would, under section 318 (a), be attributed to the person acquiring such stock.

(4) *Distributee defined.* For purposes of this subsection, the term "distributee" means only the corporation which meets the 80 percent stock ownership requirements specified in section 332 (b).

(c) *Property received in liquidation under section 333.* If—

(1) Property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and

(2) With respect to such acquisition—

(A) Gain was realized, but

(B) As the result of an election made by the shareholder under section 333, the extent to which gain was recognized was determined under section 333,

then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him.

§ 1.334-1 *Basis of property received in liquidations.* (a) *In general.* Section 334 sets forth rules prescribing the basis of property received in a distribu-

tion in partial or complete liquidation of a corporation. The general rule of section 334 is set forth in section 334 (a) to the effect that if property is received in a distribution in partial or complete liquidation and if gain or loss is recognized on the receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution. Such general rule has no application to a liquidation to which section 332 or section 333 applies. See section 334 (b) and (c).

(b) *Transferor's basis.* Except as otherwise provided in this section, property received by a parent corporation, as defined in section 332 (b), in the complete liquidation of its subsidiary corporation shall have the same basis in the hands of the parent as its adjusted basis in the hands of the subsidiary. The rule stated above is applicable even though the subsidiary was indebted to the parent on the date the plan of liquidation was adopted and part of such property was received in satisfaction of such indebtedness in a transfer to which section 332 (c) is applicable.

(c) *Application of stock basis to property.* Section 334 (b) (2) provides a general rule that where property is received in a transaction to which section 332 is applicable under the circumstances described in section 334 (b) (2), such property shall have a basis equal to the basis of the stock with respect to which it is received. The application of this provision is subject to the following rules:

(1) Property received with reference to stock owned immediately before the liquidation by the parent corporation is only property to which section 334 (b) (2) is applicable. The section is not applicable to property received with respect to debt or other claims. The basis of the stock used in determining the basis of the assets is the total basis of all stock held by the parent corporation whether or not such stock was acquired by purchase and whether or not such stock is the stock acquired during the 12-months period to which reference is made in section 334 (b) (2)-(A).

(2) See section 332 (b) (2) for determination of the date of adoption of a plan of liquidation.

(3) (i) In the case of a series of purchases of stock, the two-year period specified in section 334 (b) (2) (A) shall begin on the day following the date of the last such purchase if the amount of stock specified in section 334 (b) (2) (B) is purchased during the preceding 12 months.

(ii) Application of the rule prescribed in subparagraph (3) (i) may be illustrated by the following examples:

Example (1). Twenty percent of the stock of Corporation A is purchased on March 31, 1954, June 30, 1954, September 30, 1954, December 31, 1954, and April 1, 1955. The two-year period shall begin on April 2, 1955.

Example (2). The facts are the same as in example (1) except that the last purchase is made on July 1, 1955. The two-year period shall begin on January 1, 1955.

(4) (i) For the purpose of section 334 (b) (2) only, the adjusted basis of the subsidiary's stock in the hands of the

parent shall be reduced by all distributions (determined, in case of a distribution in kind, by reference to the portion of the basis of the stock allocable thereto in lieu of the adjusted basis provided in section 301 (b) (1) (B) (ii) and the basis of such assets in the hands of the parent shall be determined for purposes of section 301 (d) (2) (B) by reference to such allocable basis) received by the parent from the subsidiary prior to the adoption of the plan of liquidation and after the beginning of the 12-month period specified in section 334 (b) (2) (B). Such reduction shall be made whether or not such distributions were taxable to the parent as ordinary dividends. The adjusted and reduced basis of the stock with respect to which the distribution in liquidation was made shall be increased—

(a) By the amount of any unsecured liabilities assumed,

(b) By the portion of the increase in earnings and profits of the subsidiary corporation attributable to stock held by the parent after the date of satisfaction of the 80 percent requirement of section 334 (b) (2) and for this purpose any gain or loss from sales or exchanges of property (whether tangible or intangible) and any other items determined by reference to basis of property shall be computed by reference to the amount realized and the part of the adjusted basis of stock allocable to such property, if such property was held on the date such 80 percent requirement was satisfied,

and decreased—

(c) By the amount of any money received,

(d) By the portion of the decrease in earnings and profits of the subsidiary corporation attributable to stock held by the parent after the date of satisfaction of the 80 percent requirement of section 334 (b) (2) and for this purpose any gain or loss from sales or exchanges of property (whether tangible or intangible) and any other items determined by reference to basis of property shall be computed by reference to the amount realized and the part of the adjusted basis of stock allocable to such property, if such property was held on the date such 80 percent requirement was satisfied.

The amount thus arrived at should be allocated to the various assets received (except cash), both tangible and intangible (whether or not amortizable), on the basis of their net fair market values on the date received (the net fair market value of an asset is its fair market value less any specific mortgage or pledge to which it is subject). To that portion of the basis thus determined, for each property against which there is a lien, should be added the amount of such lien. Where more than one property is covered by the same lien, the amount of the lien should be divided among the properties, allocating to each that portion of the lien which the fair market value of such property bears to the total fair market value of the properties covered by the same lien. Whether the mortgage indebtedness is assumed by the parent or the property is taken subject to the mortgage is immaterial. The basis of the

property received shall be zero if the cash received is equal to or in excess of the adjusted basis of the stock.

(ii) Application of the rules prescribed in subparagraph (4) (i) may be illustrated by the following examples:

Example (1). Corporation A bought all of the stock of Corporation B for \$1,000 on January 1, 1955. The only asset of Corporation B was a building having a basis of \$100. On July 1, 1955, such building was sold for \$1,050. The amount received was invested in another building immediately thereafter. On December 30, 1955, Corporation B was liquidated under section 332 in a transaction in which the basis of the assets in the hands of the recipient corporation was determined under section 334 (b) (2). The basis of the stock of Corporation B in the hands of Corporation A is increased by \$50 pursuant to § 1.334-1 (c) (4) (i). The basis of the building received by Corporation A upon the liquidation of Corporation B is \$1,050.

Example (2). Facts are the same as in example (1) except that the sale price of the building sold was \$750. The basis of the building in the hands of Corporation A upon liquidation is \$750.

(5) Section 334 (b) does not apply to minority shareholders. The basis of property, other than cash, received by these shareholders shall be determined under section 334 (a) or section 358.

§ 1.334-2 *Property received in liquidation under section 333.* The basis of assets (other than money) acquired by stockholders in a liquidation upon which the amount of gain recognized was limited under section 333 shall be the same as the basis of the shares of stock redeemed or cancelled, decreased in the amount of any money received and increased in the amount of gain recognized and the amount of the unsecured liabilities assumed by the stockholders. The amount thus arrived at should be allocated to the various assets received on the basis of their net fair market values (the net fair market value of an asset is its fair market value less any specific mortgage or pledge to which it is subject). To that portion of the basis thus determined, for each property against which there is a lien, should be added the amount of such lien. Where more than one property is covered by the same lien, the amount of the lien should be divided among the properties, allocating to each that portion of the lien that the fair market value of such property bears to the total market value of the properties covered by the same lien. Whether the mortgage indebtedness is assumed by the shareholders or the property is taken subject to the mortgage is immaterial. The application of this paragraph may be illustrated by the following example:

Example. The X corporation distributed all its property in complete liquidation during the month of October 1954 pursuant to the provisions of section 333. A, an individual, and a qualifying electing shareholder, received, in cancellation or redemption of 100 shares of stock owned by him at the time of the adoption of the plan of liquidation, \$1,000 in cash, property (other than stock or securities acquired by the corporation after December 31, 1953) with a fair market value of \$22,000 subject to a lien of \$1,000, and stock acquired by the liquidating corporation after December 31, 1953 with a

fair market value of \$4,000. A, also assumed a \$2,000 liability of the liquidating corporation. The basis of the shares owned by A was \$120 per share or \$12,000. A's ratable share of the earnings and profits of the X corporation accumulated after February 28, 1913 (computed as provided in section 333) was \$2,500. His gain is \$12,000, but under section 333 only \$5,000 of this gain is recognized, \$2,500 thereof being taxed as a dividend. The basis of all the property other than money received by A is \$19,000, computed as follows:

Adjusted basis of stock cancelled or redeemed	\$12,000
Less: money received	1,000
Remainder	11,000
Liability assumed	2,000
Specific lien against property (other than stock)	1,000
Gain recognized	5,000

Basis of property acquired... 19,000

The basis, excluding the specific lien attached to the property, (\$19,000 less \$1,000, \$18,000) will be apportioned among the classes of property other than money received as follows: \$20,000/\$24,000 of \$18,000 or \$15,000 to the property other than stock; \$4,000/\$24,000 of \$18,000 or \$3,000 to the stock. The basis of the property other than stock is \$15,000, must be increased by the amount of the specific lien attached thereto, \$1,000, making a total basis for such property of \$16,000.

EFFECT ON CORPORATION

§ 1.336 Statutory provisions; general rule.

Sec. 336. *General rule.* Except as provided in section 453 (d) (relating to disposition of installment obligations), no gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation.

§ 1.336-1 *General rule on liquidation of corporation.* Except as provided in section 453 (d), no gain or loss is recognized to a corporation on the distribution by it of property in kind in partial or complete liquidation (regardless of the fact that such property may have appreciated or depreciated in value since its acquisition by the corporation). However, gain or loss is recognized to a corporation on all sales by it, whether directly or through trustees or a receiver, except as provided in section 337 (relating to sales or exchanges in connection with certain liquidations). See sections 61, 6036, 6155 (a), 6161 (c), 6503 (b), 6601, 6871, 6872 and 6873.

§ 1.337 Statutory provisions; gain or loss on sales or exchanges in connection with certain liquidations.

Sec. 337. *Gain or loss on sales or exchanges in connection with certain liquidations—*
(a) *General rule.* If—

(1) A corporation adopts a plan of complete liquidation on or after June 22, 1954, and

(2) Within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims,

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(b) *Property defined.*—(1) In general. For purposes of subsection (a), the term "property" does not include—

(A) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business.

(B) Installment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in subsection (a)) of stock in trade or other property described in subparagraph (A) of this paragraph, and

(C) Installment obligations acquired in respect of property (other than property described in subparagraph (A)) sold or exchanged before the date of the adoption of such plan of liquidation.

(2) *Nonrecognition with respect to inventory in certain cases.* Notwithstanding paragraph (1) of this subsection, if substantially all of the property described in subparagraph (A) of such paragraph (1) which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of subsection (a) the term "property" includes—

(A) Such property so sold or exchanged, and

(B) Installment obligations acquired in respect of such sale or exchange.

(c) *Limitations.*—(1) *Collapsible corporations and liquidations to which section 333 applies.* This section shall not apply to any sale or exchange—

(A) Made by a collapsible corporation (as defined in section 341 (b)), or

(B) Following the adoption of a plan of complete liquidation, if section 333 applies with respect to such liquidation.

(2) *Liquidations to which section 332 applies.* In the case of a sale or exchange following the adoption of a plan of complete liquidation, if section 332 applies with respect to such liquidation, then—

(A) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334 (b) (1), this section shall not apply; or

(B) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334 (b) (2), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of (i) that portion of the adjusted basis (adjusted for any adjustment required under the second sentence of section 334 (b) (2)) of the stock of the liquidating corporation which is allocable, under regulations prescribed by the Secretary or his delegate, to the property sold or exchanged, over (ii) the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

§ 1.337-1 *General.* Except as provided in sections 337 (c) and 392 (b), if a corporation distributes all of its assets in complete liquidation within 12 months after the adoption of a plan of liquidation, which plan must be adopted on or after June 22, 1954, no gain or loss shall be recognized from the sale of property (as defined in section 337 (b)) during such 12-month period. All assets (less assets retained to meet claims), both tangible and intangible, must be distributed within the 12-month period. Any assets retained after the expiration of the 12-month period for the payment of claims (including unascertained or contingent liabilities or expenses) must be specifically set apart for that purpose and must be reasonable in amount in relation to the items involved. The 12-month period shall be-

gin on the date of adoption of the plan determined as provided in § 1.337-2 (b) and no extension of such period can be granted. See section 453 (d) (4) (B) relative to nonrecognition of gain on the distribution of certain installment obligations. Section 337 (c) provides that the rules of this section shall not be applicable to any sale or exchange—

(a) Made by a corporation which, if none of the sales of property (as defined in section 337 (b)) made after adoption of the plan of liquidation had been made, would be a collapsible corporation as defined in section 341 (b),

(b) Made by a corporation to the liquidation of which section 333 is applicable, or

(c) Made by a corporation to the liquidation of which section 332 applies except as provided in section 337 (c) (2) (B). Section 392 (b) provides special rules with respect to the recognition of gain or loss upon certain sales made by a liquidating corporation during 1954 and 1955.

§ 1.337-2 *Sales or exchanges within the scope of section 337.* (a) Provided the other conditions of section 337 are met, sales or exchanges which occur on or after the date on which the plan of complete liquidation is adopted and within the 12-month period thereafter are subject to the provisions of such section. In ascertaining whether a sale or exchange occurs on or after such date, the fact that negotiations with a view towards sale may have been commenced, either by the corporation or its shareholders, or both shall be disregarded. Moreover, provided the other conditions of this section are met, section 337 applies whether the corporation or its stockholders, in fact, effected the sale. For the purposes of section 337, the date on which a sale or exchange occurs shall be determined from all the facts and circumstances.

(b) For the purpose of section 337 (a) the date of adoption of the plan of complete liquidation of a corporation is the date on which occurs the first step in the execution of such plan, but not later than the date of the adoption of the resolution by the shareholders authorizing the distribution of the corporate assets in redemption of all of the stock pursuant to which the corporation is liquidated. In determining such date, consideration will be given to the dates of any sales of property (as defined in section 337 (b)) not ordinarily made in the conduct of the business as well as to all other relevant facts and circumstances.

§ 1.337-3 *Property defined.* (a) Except as provided in section 337 (b) (2) and this section, the term "property" as used in section 337 (a) and § 1.337-1 does not include, (1) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business (hereinafter for purposes of section 337 referred to as "inventory"), (2) installment obligations acquired at any time

from the sale or exchange of inventory, or (3) installment obligations acquired from the sale or exchange of property (other than inventory) prior to the adoption of the plan of liquidation. With the exceptions listed above, the term "property" includes all assets owned by a corporation.

(b) Except as provided in paragraph (c) of this section, if substantially all of the inventory is sold or exchanged to one person in one transaction, then for the purpose of section 337 (a) the term "property" shall include:

(1) the inventory so sold or exchanged, and

(2) installment obligations acquired in such sale or exchange.

For this purpose, the term "substantially all" includes that part of such assets which are subject to liabilities, specific or otherwise. Section 337 (b) (2) shall be inapplicable if the inventory so sold is replaced by like inventory, or by a new kind of inventory.

(c) The term "property" in the case of a corporation which is engaged in two or more distinct businesses shall include the inventory of any one of such trades or businesses if substantially all of the inventory attributable to such trade or business is sold or exchanged to one person in one transaction. If installment obligations are received upon such a sale, such obligations are also included within the meaning of the term "property".

(d) This section may be illustrated by the following examples:

Example (1). Corporation A operates a grocery store at one location and a hardware store at another. Neither store handles items similar to those handled by the other. Both stores are served by a common warehouse. Pursuant to a plan of liquidation adopted by the corporation, the grocery store and all of its inventory, including that part of its inventory held in the warehouse, are sold to one person in one transaction. Thereafter, and within 12 months after the adoption of the plan of liquidation, all of the assets of the corporation are distributed to the shareholders. No gain or loss will be recognized upon the sale of all of the assets attributable to the grocery business, including the inventory items.

Example (2). Corporation B operates two department stores, one in the downtown business district and the other in a suburban shopping center. Both handle the same items and are served by a common warehouse which contains an amount of inventory items equal to the total of that in both stores. The part of the inventory in the warehouse which is attributable to each store cannot be clearly determined. Pursuant to a plan of liquidation adopted by the corporation, the assets of the suburban store, including the inventory held in such store, but not including any portion of the inventory held in the warehouse, are sold to one person in one transaction. Thereafter, and within 12 months after the adoption of the plan of liquidation, all of the assets of the corporation are distributed to the shareholders. No gain or loss will be recognized with respect to the sale of the property other than the inventory, but gain or loss will be recognized upon the sale of the inventory.

Example (3). The facts are the same as in example (2) except that the part of the inventory in the warehouse which is attributable to the suburban store can be clearly determined and both the inventory held in the store and that part of the in-

ventory in the warehouse attributable to such store are sold. No gain or loss will be recognized upon the sale of the inventory.

§ 1.337-4 Limitation of gain. (a) Section 337 (c) (2) (B) provides a limitation upon the amount of gain not recognized where a corporation sells or exchanges property pursuant to a plan of complete liquidation (and such property, if distributed, would take the basis of the stock held by the distributee pursuant to the provisions of section 334 (b) (2) (relating to plans of liquidation adopted within 2 years after purchase of the stock)). The amount of gain not recognized shall not be greater than the excess of (1) that portion of the adjusted basis (further adjusted as provided in the second sentence of section 334 (b) (2) and in § 1.334-1 (c)) of the stock of the liquidating corporation in the hands of its parent corporation allocable to the property sold or exchanged over (2) the adjusted basis of such property in the hands of the liquidating corporation.

(b) Paragraph (a) of this section may be illustrated by the following example:

Example. Corporation A owns more than 80 percent of the stock of Corporation B, which it purchased for \$10,000. All of the assets of Corporation B, having a total basis of \$4,000 are sold for \$12,000. The portion of the realized gain of \$8,000 which is not recognized is \$6,000, computed as follows:

Basis of stock allocable to property sold.....	\$10,000
Basis of property sold.....	4,000
Excess (not recognized).....	6,000

In general, where section 337 (c) (2) (B) is applicable and where the gain realized from the sale of property is greater than the excess of the selling price of the property over the basis of the stock allocable to the property sold, the amount of gain to be recognized from such sale is equal to such excess. In the above example, the \$2,000 gain representing the excess of the selling price of \$12,000 over the basis of the stock allocable to the property sold (\$10,000) would be recognized to the liquidating corporation.

(c) For the purpose of this section only, the basis (adjusted as described in (a) of this section) of the liquidating corporation's stock in the hands of its parent corporation on the date of the first sale of property, shall be allocated to the assets of the liquidating corporation (unreduced by any amount applicable to minority interests) on the basis of the fair market value of such assets (see § 1.334-1 (c)), both tangible and intangible, on the date the first property is sold by the liquidating corporation. The allocation then made shall remain unchanged for the purpose of determining recognized gain upon subsequent sales of property by the liquidating corporation unless the stock ownership of the parent corporation changes. In the event of such a change, a new allocation shall be made at the time of the next sale of property thereafter. The new allocation shall be made on the basis of the fair market value of the liquidating corporation's assets on the date of such sale.

§ 1.337-5 Information to be filed with return. There must be attached to the return of the liquidating corporation, the following information:

(a) A copy of the minutes of the stockholders' meeting at which the plan of liquidation was adopted, including a copy of the plan of liquidation.

(b) A statement of the assets sold after the adoption of the plan of liquidation including the dates of such sales. If section 337 (c) (2) (B), relating to limited nonrecognition of gain on sales by subsidiaries, is applicable, this statement must include a computation of the total gain and of the gain not recognized under this section.

(c) Information as to the date of the final liquidating distribution.

(d) A statement of the assets, if any, retained to pay liabilities and the nature of the liabilities.

§ 1.338 Statutory provisions; effect on earnings and profits.

SEC. 338. Effect on earnings and profits. For special rule relating to the effect on earnings and profits of certain distributions in partial liquidation, see section 312 (e).

COLLAPSIBLE CORPORATIONS; FOREIGN PERSONAL HOLDING COMPANIES

§ 1.341 Statutory provisions; collapsible corporations.

SEC. 341. Collapsible corporations—(a) Treatment of gain to shareholders. Gain from—

(1) The sale or exchange of stock of a collapsible corporation,

(2) A distribution in partial or complete liquidation of a collapsible corporation, which distribution is treated under this part as in part or full payment in exchange for stock, and

(3) A distribution made by a collapsible corporation which, under section 301 (c) (3) (A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property,

to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset held for more than 6 months shall, except as provided in subsection (d), be considered as gain from the sale or exchange of property which is not a capital asset.

(b) **Definitions—(1) Collapsible corporation.** For purposes of this section, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to—

(A) The sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and

(B) The realization by such shareholders of gain attributable to such property.

(2) **Production or purchase of property.** For purposes of paragraph (1), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if—

(A) It engaged in the manufacture, construction, or production of such property to any extent,

(B) It holds property having a basis determined, in whole or in part, by reference

to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

(C) It holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) *Section 341 assets.* For purposes of this section, the term "section 341 assets" means property held for a period of less than 3 years which is—

(A) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(B) Property held by the corporation primarily for sale to customers in the ordinary course of its trade or business;

(C) Unrealized receivables or fees, except receivables from sales of property other than property described in this paragraph; or

(D) Property described in section 1231 (b) (without regard to any holding period therein provided), except such property which is or has been used in connection with the manufacture, construction, production, or sale of property described in subparagraph (A) or (B).

In determining whether the 3-year holding period specified in this paragraph has been satisfied, section 1223 shall apply, but no such period shall be deemed to begin before the completion of the manufacture, construction, production, or purchase.

(4) *Unrealized receivables.* For purposes of paragraph (3) (C), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(A) Goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(B) Services rendered or to be rendered.

(c) *Presumption in certain cases.*—(1) *In general.* For purposes of this section, a corporation shall, unless shown to the contrary, be deemed to be a collapsible corporation if (at the time of the sale or exchange, or the distribution, described in subsection (a)) the fair market value of its section 341 assets (as defined in subsection (b) (3)) is—

(A) 50 percent or more of the fair market value of its total assets, and

(B) 120 percent or more of the adjusted basis of such section 341 assets.

Absence of the conditions described in subparagraphs (A) and (B) shall not give rise to a presumption that the corporation was not a collapsible corporation.

(2) *Determination of total assets.* In determining the fair market value of the total assets of a corporation for purposes of paragraph (1) (A), there shall not be taken into account—

(A) Cash,

(B) Obligations which are capital assets in the hands of the corporation (and governmental obligations described in section 1221 (5)), and

(C) Stock in any other corporation.

(d) *Limitations on application of section.* In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this section shall not apply—

(1) Unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (b) (3) or at any time thereafter, such shareholder (A) owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation, or (B) owned stock which was considered as owned at such time

by another shareholder who then owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation;

(2) To the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(3) To gain realized after the expiration of 3 years following the completion of such manufacture, construction, production, or purchase.

For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544 (a) (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

§ 1.341-1 *Collapsible corporations.*—*In general.* Subject to the limitations contained in § 1.341-4, the entire gain from (a) the actual sale or exchange of stock of a collapsible corporation, (b) amounts distributed in complete or partial liquidation of a collapsible corporation which are treated, under section 331 as payment in exchange for stock, and (c) a distribution made by a collapsible corporation which, under section 301 (c) (3), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property, shall be considered as gain from the sale or exchange of property which is not a capital asset.

§ 1.341-2 *Definitions.*—(a) *Determination of collapsible corporation.* (1) A collapsible corporation is defined by section 341 (b) (1) to be a corporation formed or availed of principally for (i) the manufacture, construction, or production of property, (ii) for the purchase of property which (in the hands of the corporation) is property described in section 341 (b) (3), or (iii) for the holding of stock in a corporation so formed or availed of, with a view to (a) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and (b) the realization by such shareholders of gain attributable to such property. See § 1.341-5 for a description of the facts which will ordinarily be considered sufficient to establish whether or not a corporation is a collapsible corporation under the rules of this section. See § 1.341-5 (d) for examples of the application of section 341.

(2) Under section 341 (b) (1) the corporation must be formed or availed of with a view to the action therein described, that is, the sale or exchange of its stock by its shareholders, or a distribution to them prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and the realization by the

shareholders of gain attributable to such property. This requirement is satisfied in any case in which such action was contemplated by those persons in a position to determine the policies of the corporation, whether by reason of their owning a majority of the voting stock of the corporation or otherwise. The requirement is satisfied whether such action was contemplated, unconditionally, conditionally, or as a recognized possibility. If the corporation was so formed or availed of, it is immaterial that a particular shareholder was not a shareholder at the time of the manufacture, construction, production, or purchase of the property, or if a shareholder at such time, did not share in such view. Any gain of such a shareholder on his stock in the corporation shall be treated in the same manner as gain of a shareholder who did share in such view. The existence of a bona fide business reason for doing business in the corporate form does not, by itself, negate the fact that the corporation may also have been formed or availed of with a view to the action described in section 341 (b).

(3) A corporation is formed or availed of with a view to the action described in section 341 (b) if the requisite view existed at any time during the manufacture, production, construction, or purchase referred to in that section. Thus, if the sale, exchange, or distribution is attributable solely to circumstances which arose after the manufacture, construction, production, or purchase (other than circumstances which reasonably could be anticipated at the time of such manufacture, construction, production, or purchase), the corporation shall, in the absence of compelling facts to the contrary, be considered not to have been so formed or availed of. However, if the sale, exchange or distribution is attributable to circumstances present at the time of the manufacture, construction, production, or purchase, the corporation shall, in the absence of compelling facts to the contrary, be considered to have been so formed or availed of.

(4) The property referred to in section 341 (b) is that property or the aggregate of those properties with respect to which the requisite view existed. In order to ascertain the property or properties as to which the requisite view existed, reference shall be made to each property as to which, at the time of the sale, exchange, or distribution referred to in section 341 (b) there has not been a realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property. However, where any such property is a unit of an integrated project involving several properties similar in kind, the determination whether the requisite view existed shall be made only if a substantial part of the taxable income to be derived from the project has not been realized at the time of the sale, exchange, or distribution, and in such case the determination shall be made by reference to the aggregate of the properties constituting the single project.

(5) A corporation shall be deemed to have manufactured, constructed, produced, or purchased property if it (i) engaged in the manufacture, construction, or production of property to any extent, or (ii) holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or (iii) holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation. Thus, under subdivision (i) of this subparagraph, for example, a corporation need not have originated nor have completed the manufacture, construction, or production of the property. Under subdivision (ii) of this subparagraph, for example, if an individual were to transfer property constructed by him to a corporation in exchange for all of the capital stock of such corporation, and such transfer qualifies under section 351, then the corporation would be deemed to have constructed the property, since the basis of the property in the hands of the corporation would, under section 362 be determined by reference to the basis of the property in the hands of the individual. Under subdivision (iii) of this subparagraph, for example, if a corporation were to exchange property constructed by it for property of like kind constructed by another person, and such exchange qualifies under section 1031 (a), then the corporation would be deemed to have constructed the property received by it in the exchange, since the basis of the property received by it in the exchange would, under section 1031 (d), be determined by reference to the basis of the property constructed by the corporation.

(6) In determining whether a corporation is a collapsible corporation by reason of the purchase of property, it is immaterial whether the property is purchased from the shareholders of the corporation or from other persons other than such shareholders. The property, however, must be property which, in the hands of the corporation, is property of a kind described in section 341 (b) (3). The determination whether property is of a kind described in section 341 (b) (3) shall be made without regard to the fact that the corporation is formed or availed of with a view to the action described in section 341 (b) (1).

(7) Section 341 is applicable whether the shareholder is an individual, a trust, an estate, a partnership, a company, or a corporation.

(b) *Section 341 assets.* For the purposes of this section, the term "section 341 assets" means the following listed property if held for less than 3 years:

(1) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(2) Property held primarily for sale to customers in the ordinary course of a trade or business.

(3) Property used in a trade or business as defined in section 1231 (b) and held for less than 3 years, except property

that is or has been used in connection with the manufacture, construction, production or sale of property described above in (1) and (2).

(4) Unrealized receivables or fees pertaining to property listed in this paragraph. The term "unrealized receivables or fees" means any rights (contractual or otherwise) to payment for property listed in (1), (2), and (3) above which has been delivered or is to be delivered and rights to payment for services rendered or to be rendered, to the extent such rights have not been included in the income of the corporation under the method of accounting used by it. In determining whether the assets referred to in this paragraph have been held for 3 years, the time such assets were held by a transferor shall be taken into consideration (section 1223). However, no such period shall begin before the date the manufacture, construction, production, or purchase of such assets is completed.

§ 1.341-3 Presumptions. (a) Unless shown to the contrary a corporation shall be considered to be a collapsible corporation if at the time of the transactions described in § 1.341-1 the fair market value of the section 341 assets held by it constitute 50 percent or more of the fair market value of its total assets and the fair market value of the section 341 assets is 120 percent or more of the adjusted basis of such assets. In determining the fair market value of the total assets, cash, obligations which are capital assets in the hands of the corporation, governmental obligations, and stock in any other corporation shall not be taken into consideration. The failure of a corporation to meet the requirements of this paragraph, shall not give rise to the presumption that the corporation was not a collapsible corporation.

(b) The following example will illustrate the application of this section:

Example. A corporation, filing its income tax returns on the accrual basis, on July 31, 1955, owned assets with the following fair market values: Cash, \$175,000; note receivable held for investment, \$130,000; stocks of other corporations, \$545,000; rents receivable, \$15,000; and a building constructed by the corporation in 1953 and held thereafter as rental property, \$750,000. The adjusted basis of the building on that date was \$600,000. The only debt outstanding was a \$500,000 mortgage on the building. On July 31, 1955, the corporation liquidated and distributed all of its assets to its shareholders. In computing whether the fair market value of the section 341 assets (only the building) is 50 percent or more of the fair market value of the total assets, the cash, note receivable, and stocks of other corporations are not taken into account in determining the value of the total assets, with the result that the fair market value of the total assets was \$765,000 (\$750,000 (Building) plus \$15,000 (rents receivable)). Therefore, the value of the building is 98 percent of the total assets (\$750,000 ÷ \$765,000). The value of the building is also 125 percent of the adjusted basis of the building (\$750,000 ÷ \$600,000). In view of the above facts, there arises a presumption that the corporation is a collapsible corporation.

§ 1.341-4 Limitations on application of section—(a) General. This section shall apply only to the extent that the recognized gain of a shareholder upon

his stock in a collapsible corporation would be considered, but for the provisions of this section, as gain from the sale or exchange of a capital asset held for more than six months. Thus, if a taxpayer sells at a gain stock of a collapsible corporation which he had held for six months or less, this section would not, in any event, apply to such gain. Also, if it is determined, under provisions of law other than section 341, that a sale or exchange at a gain of stock of a collapsible corporation which has been held for more than six months results in ordinary income rather than long-term capital gain, then this section (including the limitations contained herein) has no application whatsoever to such gain.

(b) *Stock ownership rules.* (1) This section shall apply in the case of gain realized by a shareholder upon his stock in a collapsible corporation only if the shareholder, at any time after the actual commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in section 341 (b) (3) or at any time thereafter, (i) owned, or was considered as owning more than 5 percent in value of the outstanding stock of the corporation, or (ii) owned stock which was considered as owned at such time by another shareholder who then owned, or was considered as owning, more than 5 percent in value of the outstanding stock of the corporation.

(2) The ownership of stock shall be determined in accordance with the rules prescribed by section 544 (a) (1), (2), (3), (5), and (6), except that, in addition to the persons prescribed by section 544 (a) (2), the family of an individual shall include the spouses of that individual's brothers and sisters, whether such brothers and sisters are by the whole or the half blood, and the spouses of that individual's lineal descendants.

(3) For the purpose of this limitation, treasury stock shall not be considered as outstanding stock.

(4) It is possible, under this limitation, that a shareholder in a collapsible corporation may have gain upon his stock in that corporation treated differently from the gain of another shareholder in the same collapsible corporation.

(c) *Seventy-percent rule.* (1) This section shall apply to the gain recognized during a taxable year upon the stock in a collapsible corporation only if more than 70 percent of such gain is attributable to the property produced or purchased referred to in section 341 (b). If more than 70 percent of such gain is so attributable, then all of such gain is subject to this section, and, if 70 percent or less of such gain is so attributable, then none of such gain is subject to this section.

(2) For the purpose of this limitation, the gain attributable to the property referred to in section 341 (b) is the excess of the recognized gain of the shareholder during the taxable year upon his stock in the collapsible corporation over the recognized gain which the shareholder would have if the property had not been manufactured, constructed, produced, or

purchased. In the case of gain on a distribution in partial liquidation or a distribution described in section 301 (c) (3) (A), the gain attributable to the property shall not be less than an amount which bears the same ratio to the gain on such distribution as the gain which would be attributable to the property if there had been a complete liquidation at the time of such distribution bears to the total gain which would have resulted from such complete liquidation.

(3) Gain may be attributable to the property referred to in section 341 (b) even though such gain is represented by an appreciation in the value of property other than that manufactured, constructed, produced, or purchased. Where, for example, a corporation owns a tract of land and the development of one-half of the tract increases the value of the other half, the gain attributable to the developed half of the tract includes the increase in the value of the other half.

(d) *Three-year rule.* This section shall not apply to that portion of the gain of a shareholder that is realized more than three years after the actual completion of the manufacture, construction, production, or purchase of the property to which such portion is attributable.

§ 1.341-5 *Application of section.* (a) Whether or not a corporation is a collapsible corporation shall be determined under the rules of §§ 1.341-2 and 1.341-3 on the basis of all the facts and circumstances in each particular case. The following paragraphs of this section set forth those facts which will ordinarily be considered sufficient to establish that a corporation is or is not a collapsible corporation. The facts set forth in the following paragraphs of this section are not exclusive of other facts which may be controlling in any particular case. For example, if the facts in paragraph (b) of this section, but not the facts in paragraph (c) of this section, are present, the corporation may nevertheless not be a collapsible corporation if there are other facts which clearly establish that the rules of § 1.341-2 and § 1.341-3 are not satisfied. Similarly, if the facts in paragraph (c) of this section are present, the corporation may nevertheless be a collapsible corporation if there are other facts which clearly establish that the corporation was formed or availed of in the manner described in § 1.341-2 and § 1.341-3 or if the facts in paragraph (c) of this section are not significant by reason of other facts, such as the fact that the corporation is subject to the control of persons other than those who were in control immediately prior to the manufacture, construction, production, or purchase of the property. See § 1.341-4 for provisions which make section 341 inapplicable to certain shareholders of collapsible corporations.

(b) The following facts will ordinarily be considered sufficient (except as otherwise provided in paragraph (a) of this section and paragraph (c) of this section) to establish that a corporation is a collapsible corporation:

(1) A shareholder of the corporation sells or exchanges his stock, or receives

a liquidating distribution, or a distribution described in section 301 (c) (3) (A),

(2) Upon such sale, exchange, or distribution, such shareholder realizes gain attributable to the property described in subparagraphs (4) and (5) of this paragraph, and

(3) At the time of the manufacture, construction, production, or purchase of the property described in subparagraphs (4) and (5) of this paragraph, such activity was substantially in relation to the other activities of the corporation which manufactured, constructed, produced, or purchased such property. The property referred to in subparagraphs (2) and (3) of this paragraph is that property or the aggregate of those properties which meet the following two requirements:

(4) The property is manufactured, constructed, or produced by the corporation or by another corporation stock of which is held by the corporation, or is property purchased by the corporation or such other corporation which (in the hands of the corporation holding such property) is property described in section 341 (b) (3), and

(5) At the time of the sale, exchange, or distribution described in subparagraph (1) of this paragraph, the corporation which manufactured, constructed, produced, or purchased such property has not realized a substantial part of the taxable income to be derived from such property. In the case of property which is a unit of an integrated project involving several properties similar in kind, the rules of this subparagraph shall be applied to the aggregate of the properties constituting the single project rather than separately to such unit. Under the rules of this subparagraph, a corporation shall be considered a collapsible corporation by reason of holding stock in other corporations which manufactured, constructed, produced, or purchased the property only if the activity of the corporation in holding stock in such other corporations is substantial in relation to the other activities of the corporation.

(c) The absence of any of the facts set forth in paragraph (b) of this section or the presence of the following facts will ordinarily be considered sufficient (except as otherwise provided in paragraph (a) of this section) to establish that a corporation is not a collapsible corporation:

(1) In the case of a corporation subject to the rules of paragraph (b) of this section only by reason of the manufacture, construction, production, or purchase (either by the corporation or by another corporation the stock of which is held by the corporation) of property which is property described in section 341 (b) (3) (A) and (B), the amount (both in quantity and value) of such property is not in excess of the amount which is normal—

(i) For the purpose of the business activities of the corporation which manufactured, constructed, produced, or purchased the property if such corporation has a substantial prior business history involving the use of such property and continues in business, or

(ii) For the purpose of an orderly liquidation of the business if the corporation which manufactured, constructed, produced, or purchased such property has a substantial prior business history involving the use of such property and is in the process of liquidation.

(2) In the case of a corporation subject to the rules of paragraph (b) of this section with respect to the manufacture, construction, or production (either by the corporation or by another corporation the stock of which is held by the corporation) of property, the amount of the unrealized taxable income from such property is not substantial in relation to the amount of the taxable income realized (after the completion of a material part of such manufacture, construction, or production, and prior to the sale, exchange, or distribution referred to in subparagraph (b) (1) of this section) from such property and from other property manufactured, constructed, or produced by the corporation.

(d) The following examples will illustrate the application of this section:

Example (1). (i) On January 2, 1954, A formed the W corporation and contributed \$50,000 cash in exchange for all of the stock thereof. The W corporation borrowed \$900,000 from a bank and used \$800,000 of such sum in the construction of an apartment house on land which it purchased for \$50,000. The apartment house was completed on December 31, 1954. On December 31, 1954, the corporation, having determined that the fair market value of the apartment house separate and apart from the land, was \$900,000, made a distribution (permitted under the applicable State law) to A of \$100,000. At this time, the fair market value of the land was \$50,000. As of December 31, 1954, the corporation has not realized any earnings and profits. In 1955, the corporation began the operation of the apartment house and received rentals therefrom. The corporation has since continued to own and operate the building. The corporation reported on the basis of the calendar year and cash receipts and disbursements.

(ii) Since A received a distribution and realized a gain attributable to the building constructed by the corporation, since, at the time of such distribution, the corporation has not realized a substantial part of the taxable income to be derived from such building, and since the construction of the building was a substantial activity of the corporation, the W corporation is considered a collapsible corporation under § 1.341-5 (b). The provisions of section 341 (d) do not prohibit the application of section 341 (a). Therefore, the distribution, if and to the extent that it may be considered long-term capital gain rather than ordinary income without regard to section 341, will be considered ordinary income under section 341 (a).

(iii) In the event of the existence of additional facts and circumstances in the above case, the corporation, notwithstanding the above facts, might not be considered a collapsible corporation. See §§ 1.341-2 and 1.341-5 (a).

Example (2). On January 2, 1954, B formed the X corporation and became the sole shareholder thereof. This corporation completed the construction of an office building in August 1954. Immediately after the completion of the building, the corporation sold this building at a gain of \$50,000, included this entire gain in its return for 1954, and distributed this entire gain (less taxes) to B. The corporation completed the construction of a second office building in

June 1955. In August 1955 B sold the entire stock of the X corporation at a gain of \$12,000, which gain is attributable to the second building. In view of the fact that B sold stock of the X corporation and realized a gain attributable to the second office building, that, at the time of such sale, the corporation had not realized a substantial part of the taxable income to be derived from such building, and that the construction of such building during the time of such construction was a substantial activity of the corporation, the X corporation is considered a collapsible corporation under paragraph (b) of this section. Since the provisions of section 341 (d) do not prohibit the application of section 341 (a) to B, the gain of \$12,000 to B is, accordingly, considered ordinary income.

Example (3). The facts are the same as in example (2), except that the following facts are shown: B was the president of the X corporation and active in the conduct of its business. The second building was constructed as the first step in a project of the X corporation for the development for rental purposes of a large suburban center involving the construction of several buildings by the corporation. The sale of the stock by B was caused by his retiring from all business activity as a result of illness arising after the second building was constructed. Under these additional facts, the corporation is not considered a collapsible corporation. See §§ 1.341-2 and 1.341-5 (a).

Example (4). (i) On January 2, 1948, C formed the Y corporation and became the sole shareholder thereof. The Y corporation has been engaged solely in the business of producing motion pictures and licensing their exhibition. On January 2, 1955, C sold all of the stock of the Y corporation at a gain. The Y corporation has produced one motion picture each year since its organization and before January 2, 1955, it has realized a substantial part of the taxable income to be derived from each of its motion pictures except the last one made in 1954. This last motion picture was completed September 1, 1954. As of January 2, 1955, no license had been made for its exhibition. The fair market value on January 2, 1955, of this last motion picture exceeds the cost of its production by \$50,000. A material part of the production of this last picture was completed on January 1, 1954, and between that date and January 2, 1955, the corporation had realized taxable income of \$500,000 from other motion pictures produced by it. The corporation has consistently distributed to its shareholder its taxable income when received (after adjustment for taxes).

(ii) Although the corporation is within paragraph (b) of this section with respect to the production of property, the amount of the unrealized income from such property (\$50,000) is not substantial in relation to the amount of the income realized, after the completion of a material part of the production of such property and prior to sale of the stock, from such property and other property produced by the corporation (\$500,000). Accordingly, the Y corporation is within paragraph (c) (2) of this section, and is not considered a collapsible corporation.

Example (5). The facts are the same as in example (4) except that C sold all of his stock to D on February 1, 1954. On January 2, 1955 D sold all of the Y corporation stock at a gain, the gain being attributable to the picture completed September 1, 1954, and not released by the corporation for exhibition. In view of the change of control of the corporation, the provisions of paragraph (c) (2) of this section are not significant at the time of the sale by D, and the Y corporation would be considered a collapsible corporation on January 2, 1955. See §§ 1.341-2 and 1.341-5 (a).

§ 1.342 Statutory provisions; liquidation of certain foreign personal holding companies.

Sec. 342. Liquidation of certain foreign personal holding companies—(a) In general. If any distribution—

(1) Is, within the meaning of the Internal Revenue Code of 1939, a distribution in partial liquidation or in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) and

(2) Is made by a foreign corporation which, with respect to any taxable year beginning on or before, and ending after, August 26, 1937, was a foreign personal holding company, and with respect to which a United States group (as defined in section 552 (a) (2)) existed after August 26, 1937, and before January 1, 1938,

then the distribution shall be treated as a distribution in full or part payment in exchange for the stock, and the amount of the gain recognized (determined under section 1002 without regard to this part) resulting from such distribution shall be considered as a gain from the sale or exchange of a capital asset held for not more than 6 months.

(b) **Special rule for certain liquidations before 1956.** Subsection (a) shall not apply in the case of a series of distributions in complete liquidation described in subsection (a) if—

(1) The first distribution is made on or after June 22, 1954, and

(2) The final distribution is made before January 1, 1956;

and the amount of the gain recognized (determined under section 1002 without regard to this part) resulting from such distributions shall be considered as a gain from the sale or exchange of a capital asset, or of property which is not a capital asset, as the case may be.

§ 1.342-1 **General.** For the purpose of section 342 (a) a liquidation may be completed before the actual dissolution of the liquidating corporation but no liquidation is completed until the liquidating corporation and the receiver or trustees in liquidation are finally divested of all the property (both tangible and intangible), and the determination of whether a foreign corporation was a foreign personal holding company with respect to a taxable year beginning on or before, and ending after August 26, 1937, shall be made under section 331 of the Revenue Act of 1936 and the regulations thereunder.

DEFINITION

§ 1.346 Statutory provisions; partial liquidation defined.

Sec. 346. Partial liquidation defined—(a) In general. For purposes of this subchapter, a distribution shall be treated as in partial liquidation of a corporation if—

(1) The distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(2) The distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the requirements of subsection (b).

For purposes of section 562 (b) (relating to the dividends paid deduction) and section 6043 (relating to information returns), a partial liquidation includes a redemption of stock to which section 302 applies.

(b) **Termination of a business.** A distribution shall be treated as a distribution described in subsection (a) (2) if the requirements of paragraphs (1) and (2) of this subsection are met.

(1) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the 5-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the 5-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

Whether or not a distribution meets the requirements of paragraphs (1) or (2) of this subsection shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

(c) **Treatment of certain redemptions.** The fact that, with respect to a shareholder, a distribution qualifies under section 302 (a) (relating to redemptions treated as distributions in part or full payment in exchange for stock) by reason of section 302 (b) shall not be taken into account in determining whether the distribution, with respect to such shareholder, is also a distribution in partial liquidation of the corporation.

§ 1.346-1 **Partial liquidation—(a) General.** A partial liquidation otherwise within the meaning of section 346 includes but is not limited to, a distribution which meets the requirements of paragraph (b) of this section. An example of a distribution which, while not meeting the requirements of (b) of this section, will qualify as a partial liquidation under section 346 (a) is a distribution resulting from a genuine contraction of the corporate business such as the distribution of unused insurance proceeds recovered as a result of a fire which destroyed part of the business causing a cessation of a part of its activities. On the other hand, the distribution of funds attributable to a reserve for an expansion program which has been abandoned does not qualify as a partial liquidation within the meaning of section 346 (a).

(b) **Termination of a business.** A distribution pursuant to the requirements of section 346 (b) shall be treated as having been made in partial liquidation if—

(1) It consists of the proceeds of the sale of the assets of a business which has been terminated or is a distribution in kind of the assets of such a business. In general, the assets which may be distributed (or sold and the proceeds distributed) may consist of, but not be limited to—

(4) Assets used in the trade or business throughout the five-year period immediately before the distribution, or assets in replacement of assets which were so used; and

(ii) Inventory (or assets held primarily for sale to customers in the ordinary course of business) of such business, which inventory was sold (other than in the ordinary course of business) in the regular course of termination of such business or, in the case of a distribution in kind, were such assets on hand at the time of the distribution of such business, if—

(a) Such items were substantially similar to those contained in such inventory during the five-year period immediately before the distribution, and

(b) The fair market value of such items on the date of sale or distribution was not substantially in excess of the fair market value of the similar items regularly on hand in the conduct of such business during such five-year period.

(2) The trade or business terminated and sold or distributed, if acquired by the distributing corporation within the five-year period, was not acquired in a transaction upon which gain or loss was recognized, in whole or in part.

(3) Immediately after the distribution, the distributing corporation is actively engaged in the conduct of a trade or business which has been actively conducted throughout the five-year period immediately before the distribution, and

(4) The remaining business, if acquired by the distributing corporation within such five-year period, was not acquired in a transaction upon which gain or loss was recognized, in whole or in part.

(c) *Active conduct of a trade or business.* For the purpose of section 346 (b) (1), a corporation shall be deemed to have actively conducted a trade or business immediately before the distribution, if—

(1) In the case of a business the assets of which have been distributed in kind, the business was operated by such corporation until the date of distribution, or

(2) In the case of the business the proceeds of the sale of the assets of which are distributed, such business was actively conducted until the date of sale and the proceeds of such sale were distributed immediately thereafter. The term "active conduct of a trade or business" shall have the same meaning in this section as in § 1.355-4.

§ 1.346-2 *Treatment of certain redemptions.* If a distribution in redemption of stock qualifies as a distribution in part or full payment in exchange for the stock under both section 302 (a) and this section, then only this section shall be applicable. None of the limitations of section 302 shall be applicable to such redemption.

§ 1.346-3 *Effect of certain sales.* The determination of whether assets sold in connection with a partial liquidation are sold by the distributing corporation or by the shareholder is a question of fact to be determined under the facts and circumstances of each case.

PART III—Corporate organization and reorganizations. The following rules are to be applied in connection with the provisions of Part III, sections 351 through 368. For rules relating to the effective date of this part and to the application

of the rules of this part to years subject to the Internal Revenue Code of 1939, see Part VI.

CORPORATE ORGANIZATIONS AND REORGANIZATIONS

§ 1.351 Statutory provisions; transfer to corporation controlled by transferor.

Sec. 351. *Transfer to corporation controlled by transferor.*—(a) *General rule.* No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368 (c)) of the corporation. For purposes of this section, stock or securities issued for services shall not be considered as issued in return for property.

(b) *Receipt of property.* If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock or securities permitted to be received under subsection (a), other property or money, then—

(1) Gain (if any) to such recipient shall be recognized, but in excess of—

(A) The amount of money received, plus

(B) The fair market value of such other property received; and

(2) No loss to such recipient shall be recognized.

(c) *Special rule.* In determining control, for the purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

(d) *Cross references.* (1) For special rule where another party to the exchange assumes a liability, or acquires property subject to a liability, see section 357.

(2) For the basis of stock, securities, or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61 (a) (1).

§ 1.351-1 *Transfer to corporation controlled by transferor.* (a) (1) Section 351 (a) provides, in general, for the nonrecognition of gain or loss upon the transfer by one or more persons of property to a corporation solely in exchange for stock or securities in such corporation if, immediately after the exchange, such person or persons are in control of the corporation to which the property was transferred. As used in section 351, the phrase "one or more persons" includes individuals, trusts, estates, partnerships, associations, companies, or corporations (see section 7701 (a) (1)). To be in control of the transferee corporation, such person or persons must own immediately after the transfer stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of such corporation (see section 368 (c)). In determining control under this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account. The phrase "immediately after the exchange" does

not necessarily require simultaneous exchanges by two or more persons, but comprehends a situation where the rights of the parties have been previously defined and the execution of the agreement proceeds with an expedition consistent with orderly procedure. For purposes of this section, stock or securities issued for services will not be treated as having been issued in return for property.

(2) The application of section 351 (a) is illustrated by the following examples:

Example (1). C owns a patent right worth \$25,000 and D owns a manufacturing plant worth \$75,000. C and D organize the R Corporation with an authorized capital stock of \$100,000. C transfers his patent right to the R Corporation for \$25,000 of its stock and D transfers his plant to the new corporation for \$75,000 of its stock. No gain or loss to C or D is recognized.

Example (2). B owns certain real estate which cost him \$50,000 in 1930, but which has a fair market value of \$200,000 in 1955. He transfers the property to the N Corporation in 1955 for 78 percent of each class of stock of the corporation having a fair market value of \$200,000, the remaining 22 percent of the stock of the corporation having been issued by the corporation in 1940 to other persons for cash. B realizes a taxable gain of \$150,000 on this transaction. (See section 368 (c)).

Example (3). E, an individual, owns property with a basis of \$10,000 but which has a fair market value of \$18,000. E also had rendered services valued at \$2,000 to Corporation F. Corporation F has outstanding 100 shares of common stock all of which are held by G. Corporation F issues 400 shares of its common stock (having a fair market value of \$20,000) to E in exchange for his property worth \$18,000 and in compensation for the services he has rendered worth \$2,000. Since immediately after the transaction, E owns 80 percent of the outstanding stock of Corporation F, no gain is recognized upon the exchange of the property for the stock. However, E realized \$2,000 of ordinary income as compensation for services rendered to Corporation F.

(b) (1) Where property is transferred to a corporation by two or more persons in exchange for stock or securities, as described in paragraph (a) of this section, it is not required that the stock and securities received by each be substantially in proportion to his interest in the property immediately prior to the transfer. Where the stock and securities received are not received in proportion to such interest, the transaction shall be treated as if the stock and securities had first been received in proportion and then some of such stock or securities had been used to make gifts (section 2501 and following), to pay compensation (section 61 (a) (1)), or to satisfy obligations of any kind. Such transaction shall be taxed in accordance with its true nature.

(2) The application of paragraph (b) (1) of this section may be illustrated as follows:

Example. Individuals A and B, father and son, organize a corporation with 100 shares of common stock to which A transfers property worth \$8,000 in exchange for 20 shares of stock, and B transfers property worth \$2,000 in exchange for 80 shares of stock. No gain or loss will be recognized under section 351. However, if it is determined that A in fact made a gift to B, such gift will be subject to tax under section 2501

and following. Similarly, if B had rendered services to A (such services having no relation to the assets transferred or to the business of the corporation) and the disproportion in the amount of stock received constituted the payment of compensation by A to B, B will be taxable upon the fair market value of the 60 shares of stock received as compensation for services rendered, and A will realize gain or loss upon the difference between the basis to him of the 60 shares and their fair market value at the time of the exchange.

§ 1.351-2 Receipt of property. (a) If an exchange would be within the provisions of section 351 (a) if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property. No loss to the recipient shall be recognized.

(b) See section 357 and the regulations pertaining to that section for applicable rules as to the treatment of liabilities as "other property" in cases subject to section 351, where another party to the exchange assumes a liability or acquires property subject to a liability.

(c) See sections 358 and 362 and the regulations pertaining to those sections for applicable rules with respect to the determination of the basis of stock, securities, or other property received in exchanges subject to section 351.

(d) See Part I of this subchapter and regulations pertaining to that Part for applicable rules with respect to the taxation of dividends where a distribution by a corporation of its stock or securities in connection with an exchange subject to section 351 (a) has the effect of the distribution of a taxable dividend.

§ 1.351-3 Records to be kept and information to be filed. (a) Every person who received the stock or securities of a controlled corporation, or other property as part of the consideration, in exchange for property under section 351, shall file with his income tax return for the taxable year in which the exchange is consummated a complete statement of all facts pertinent to such exchange, including—

(1) A description of the property transferred, or of his interest in such property, together with a statement of the cost or other basis thereof, adjusted to the date of transfer.

(2) With respect to stock of the controlled corporation received in the exchange, a statement of—

(i) The kind of stock and preferences, if any;

(ii) The number of shares of each class received; and

(iii) The fair market value per share of each class at the date of the exchange.

(3) With respect to securities of the controlled corporation received in the exchange, a statement of—

(i) The principal amount and terms; and

(ii) The fair market value at the date of exchange.

(4) The amount of money received, if any.

(5) With respect to other property received—

(i) A complete description of each separate item;

(ii) The fair market value of each separate item at the date of exchange; and

(iii) In the case of a corporate shareholder, the adjusted basis of the other property in the hands of the controlled corporation immediately before the distribution of such other property to the corporate shareholder in connection with the exchange.

(6) With respect to liabilities of the transferors assumed by the controlled corporation, a statement of—

(i) The nature of the liabilities;

(ii) When and under what circumstances created;

(iii) The corporate business reason for assumption by the controlled corporation; and

(iv) Whether such assumption eliminates the transferor's primary liability.

(b) Every such controlled corporation shall file with its income tax return for the taxable year in which the exchange is consummated—

(1) A complete description of all the property received from the transferors.

(2) A statement of the cost or other basis thereof in the hands of the transferors adjusted to the date of transfer.

(3) The following information with respect to the capital stock of the controlled corporation—

(i) The total issued and outstanding capital stock immediately prior to and immediately after the exchange, with a complete description of each class of stock;

(ii) The classes of stock and number of shares issued to each transferor in the exchange, and the number of shares of each class of stock owned by each transferor immediately prior to and immediately after the exchange; and

(iii) The fair market value of the capital stock as of the date of exchange which was issued to each transferor.

(4) The following information with respect to securities of the controlled corporation—

(i) The principal amount and terms of all securities outstanding immediately prior to and immediately after the exchange.

(ii) The principal amount and terms of securities issued to each transferor in the exchange, with a statement showing each transferor's holdings of securities of the controlled corporation immediately prior to and immediately after the exchange.

(iii) The fair market value of the securities issued to the transferors on the date of the exchange; and

(iv) A statement as to whether the securities issued in the exchange are subordinated in any way to other claims against the controlled corporation.

(5) The following information as to the transferor's liabilities assumed by the controlled corporation in the exchange—

(i) The amount and a description thereof,

(ii) When and under what circumstances created; and

(iii) The corporate business reason or reasons for assumption by the controlled corporation.

(c) Permanent records in substantial form shall be kept by every taxpayer who participates in the type of exchange described in section 351, showing the information listed above, in order to facilitate the determination of gain or loss from a subsequent disposition of stock or securities and other property, if any, received in the exchange.

EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

§ 1.354 Statutory provisions; exchanges of stock and securities in certain reorganizations.

Sec. 354. Exchanges of stock and securities in certain reorganizations.—(a) *General rule.*—(1) *In general.* No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) *Limitation.* Paragraph (1) shall not apply if—

(A) The principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(B) Any such securities are received and no such securities are surrendered.

(3) *Cross reference.* For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered), see section 356.

(b) *Exception.*—(1) *In general.* Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of section 368 (a) (1) (D), unless—

(A) The corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) The stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(2) *Cross reference.* For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of section 368 (a) (1) (D), see section 355.

(c) *Certain railroad reorganizations.* Notwithstanding any other provision of this subchapter, subsection (a) (1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368 (a)) for a railroad approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or under section 20b of the Interstate Commerce Act, as being in the public interest.

§ 1.354-1 Exchanges of stock and securities in certain reorganizations. (a) Section 354 (a) provides, in general, that no gain or loss shall be recognized if stock or securities of a corporation, a party to a reorganization, are exchanged solely for stock or securities of such corporation or of another corporation, a party to the reorganization, in pursuance of the plan of reorganization. Such section is applicable to exchanges pursuant to reorganizations described in section 368 except that in a reorganization de-

scribed in section 368 (a) (1) (D) it applies only if the transferor corporation—

(1) Transfers all or substantially all of its assets to a single corporation, and

(2) Distributes all of its remaining properties (if any) and the stock, securities and other properties received in the exchange to its shareholders or security holders in pursuance of the plan of reorganization. The fact that properties retained by the transferor corporation, or received in exchange for the properties transferred in the reorganization, are used to satisfy existing obligations not represented by securities does not prevent the application of section 354 to an exchange pursuant to a plan of reorganization defined in section 368 (a) (1) (D).

(b) Except in the case described in subsection (c), section 354 is not applicable to an exchange of stock or securities if the shareholder or security holder receives a greater principal amount of securities than the principal amount of securities surrendered, or if securities are received by the shareholder or security holder and no securities are surrendered in exchange therefor. See, however, section 356 and regulations pertaining to such section.

(c) An exchange of stock or securities shall be subject to section 354 even though—

(1) Such exchange is not pursuant to a plan of reorganization described in section 368 (a), and

(2) The principal amount of the securities received exceeds the principal amount of the securities surrendered or if securities are received and no securities are surrendered—

If such exchange is pursuant to a plan of reorganization for a railroad corporation as defined in section 77 (m) of the Bankruptcy Act and is approved by the Interstate Commerce Commission under section 77 of such Act or under section 20b of the Interstate Commerce Commission Act as being in the public interest. Section 354 is not applicable to such exchanges if there is received property other than stock or securities. See, however, section 356 and regulations pertaining to such section.

§ 1.355 Statutory provisions; distribution of stock and securities of a controlled corporation.

Sec. 355. Distribution of stock and securities of a controlled corporation—(a) Effect on distributees—(1) General rule. If—

(A) A corporation (referred to in this section as the "distributing corporation")—

(i) Distributes to a shareholder, with respect to its stock, or

(ii) Distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

(B) The transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such dis-

tribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) The requirements of subsection (b) (relating to active businesses) are satisfied, and

(D) As part of the distribution, the distributing corporation distributes—

(i) All of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) An amount of stock in the controlled corporation constituting control within the meaning of section 368 (c), and it is established to the satisfaction of the Secretary or his delegate that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) *Non pro rata distributions, etc.* Paragraph (1) shall be applied without regard to the following:

(A) Whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation.

(B) Whether or not the shareholder surrenders stock in the distributing corporation, and

(C) Whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368 (a) (1) (D)).

(3) *Limitation.* Paragraph (1) shall not apply if—

(A) The principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(B) Securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

For purposes of this section (other than paragraph (1) (D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction which occurs within 5 years of the distribution of such stock and in which gain or loss was recognized in whole or in part, shall not be treated as stock of such controlled corporation, but as other property.

(4) *Cross reference.* For treatment of the distribution if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered), see section 356.

(b) *Requirements as to active business—*

(1) *In general.* Subsection (a) shall apply only if either—

(A) The distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) Immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) *Definition.* For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if—

(A) It is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,

(B) Such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) Such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) Control of a corporation which (at the time of acquisition of control) was conducting such trade or business—

(i) Was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or

(ii) Was so acquired by another corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

§ 1.355-1 Distribution of stock and securities of controlled corporation—(a) Scope.

Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of two or more existing businesses formerly operated by a single corporation. It applies only to the separation of existing businesses which have been in active operation for at least five years, and which, in general, have been owned for at least five years by the corporation making the distribution of stock or of stock and securities.

(b) *Types of separations.* Section 355 is concerned with two general types of separation of businesses. The first is the distribution of the stock of an existing corporation. The second is the distribution of the stock of a new corporation which stock was received in exchange for the assets of a business previously operated directly by the distributing corporation. In both cases, it contemplates the continued operation of the businesses existing prior to the separation.

(c) *Active business.* Section 355 is not applicable unless both the controlled corporation and the distributing corporation are engaged in the active conduct of a trade or business. For specific rules in this connection see section 355 (b) (1) and (2). Without regard to such rules, a trade or business consists of a specific existing group of activities being carried on by a corporation or individual for the purpose of earning income or profit from only those specific activities. Such group of activities ordinarily must include the collection of income and the payment of expenses. It does not include—

(1) The holding for investment purposes only of stock, securities, land or other property, including casual sales thereof (whether or not the proceeds of such sales are reinvested),

(2) The ownership and operation of land or buildings all, or substantially all of which are used and occupied by the owner in the operation of a trade or business, or

(3) A group of activities which, while a part of a business operated for profit, are not themselves producing income even though such activities would produce income with the addition of other activities or with large increases in

activities previously incidental or insubstantial.

(d) The following examples illustrate the application of the rules described in paragraph (c) of this section:

Example (1). Corporation A is engaged in the manufacture and sale of soap and detergents and owns investment securities. It proposes to place the investment securities in a new corporation and distribute the stock to its shareholders. The holding of investment securities does not constitute a trade or business.

Example (2). Corporation B is engaged in the business of manufacturing and selling hats in its own factory building. It proposes to transfer the factory building to a new corporation and distribute the stock to its shareholders. The activities in connection with the manufacturing of hats constitute a trade or business; but the operation of the factory building does not. After the transaction, the corporation receiving the building may be engaged in a trade or business because of its activities in connection with the building but it will not be engaged in a trade or business in which corporation B was engaged.

Example (3). Corporation C, a bank, owned an eleven story building, seven floors of which were rented and the remaining four of which were occupied by it in the conduct of its banking business. It proposes to transfer the building to a new corporation and distribute the stock to its shareholders. The activities in connection with banking constitute a trade or business as do also the activities in connection with the rental of the building.

Example (4). Corporation D is engaged in the manufacture and sale of wood products. In connection with such manufacturing, it maintains a research and development department. It proposes to transfer the research and development department to a new corporation after which it will engage the services of the new corporation on a contract basis. The activities of the research and development department do not constitute a trade or business.

Example (5). Corporation E is engaged in selling lumber and building supplies on a wholesale and retail basis. It proposes to transfer the retail business to a new corporation and distribute the stock to its shareholders. Both the wholesale and retail activities constitute trade or businesses.

Example (6). Corporation F owns and rents an office building and owns vacant land. It proposes to transfer the vacant land to a new corporation and distribute the stock to its shareholders. The holding of the vacant land does not constitute a trade or business.

Example (7). Corporation H owns land on which it engages in the ranching business. Oil has been discovered in the area and it is apparent that oil may be found under the land on which the ranching activities are maintained. Corporation H has engaged in no activities in connection with the mineral rights. It proposes to transfer the mineral rights to a new corporation and distribute the stock to its shareholders. Corporation H is not engaged in an active trade or business with respect to the mineral rights.

Example (8). Corporation I manufactures and sells completed electrical products at a plant in State X and at a plant in State Y. It proposes to transfer the plant and business in State Y to a new corporation and distribute the stock to its shareholders. The activities in each state constitute a trade or business.

Example (9). Corporation J manufactures and sells in State X. It purchases land and constructs a new plant in State X. After manufacturing and selling operations have commenced at the new plant, it proposes to transfer it to a new corporation and distribute the stock to its shareholders. The activi-

ties at the new plant constitute a trade or business which, however, has been in existence only since such activities began.

§ 1.355-2 Limitations—(a) Property distributed. The property distributed must consist solely of stock or stock and securities of a controlled corporation. If additional property is received, see section 356.

(b) Distribution of earnings and profits. (1) The transaction must not have been used principally as a device for the distribution of the earnings and profits of the distributing corporation or of the controlled corporation or of both. If, pursuant to an arrangement negotiated or agreed upon prior to the distribution of stock or securities of the controlled corporation, part or all of the stock or securities of either corporation are sold or exchanged, such sale or exchange will be sufficient evidence that the transaction was used principally as a device for the distribution of the earnings and profits of the distributing corporation or of the controlled corporation, or both. However, if a sale of such stock or securities is made after the distribution and is not pursuant to an arrangement negotiated or agreed upon prior to the distribution, the mere fact of such sale is not indicative that the transaction was used principally as a device for the distribution of earnings and profits. For example, in a case in which all of the properties of a corporation are transferred to two new corporations and the stock of each new corporation is distributed to the two shareholders of the transferor so that each shareholder is the sole owner of one of the new corporations, the sale of the stock received by either of such shareholders (not pursuant to an arrangement negotiated or agreed upon prior to the distribution) will not be sufficient evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(2) The determination of whether a sale is pursuant to an arrangement negotiated, prior to the distribution, shall be made without regard to whether or not enforceable rights to buy or to sell existed at the time of the distribution. In any case in which a proposed sale or exchange was discussed by the buyer and seller before such distribution, the question whether an arrangement was negotiated within the meaning of section 355 (a) (1) (B) will be determined in the light of all the facts and circumstances.

(c) Business purpose. The distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities will be deemed a transaction used principally as a device for the distribution of earnings and profits where carried out for purposes not germane to the business of the corporations. The principal purpose of the requirement that the transaction not be used principally as a device for the distribution of earnings and profits is to limit the application of section 355 to certain specified distributions or exchanges with respect to the stock or securities of controlled corporations incident

to such readjustment of corporate structures as is required by business exigencies and which, in general, effect only a readjustment of continuing interests in property under modified corporate forms. All of the requisites of business and corporate purposes described under § 1.368 must be met to exempt a transaction from the recognition of gain or loss under this section.

(d) Stock and securities distributed. The distributing corporation must distribute—

(1) All of the stock and securities of the controlled corporation which it owns, or

(2) At least an amount of the stock which constitutes control as defined in section 368 (c). In such case all, or any part, of the securities of the controlled corporation may be distributed.

Ordinarily, the business reasons (as distinguished from the desire to make a distribution of the earnings and profits) which support a distribution of stock and securities of a controlled corporation will require the distribution of all of the stock and securities as under (1) above. Where a part of either the stock or securities is retained, as under (2) above, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan, having as one of its principal purposes, the avoidance of Federal income tax.

(e) Principal amount of securities.

(1) Section 355 (a) (1) is not applicable if the principal amount of securities received exceeds the principal amount of securities surrendered. In such case and in a case in which securities are received and no securities are surrendered, see section 356.

(2) If only stock is received in a transaction to which section 355 is applicable, the principal amount of securities surrendered, if any, and the par or stated value of stock is not relevant to the application of such section. For example: All of the stock of Corporation A is owned by X, an individual, and securities in the principal amount of \$100,000 which were issued by Corporation A are owned by Y, an individual. Corporation A distributes all of the stock of a controlled corporation to Y in exchange for his securities. The par or stated value of the stock of the controlled corporation is \$150,000. No gain or loss is recognized to Y upon the receipt of the stock of the controlled corporation.

(f) Period of ownership. (1) For the purposes of determining whether gain or loss will be recognized upon a distribution, stock of a controlled corporation acquired (in a transaction in which gain or loss is recognized, in whole or in part) within five years of the date of the distribution of such stock is treated as "other property." Section 355 does not apply to a transaction which includes a distribution of such stock. See section 356. The stock so acquired is "stock", however, for the purpose of the requirements respecting the distribution of stock of such controlled corporation provided in section 355 (a) (1) (D).

(2) Paragraph (f) (1) of this section may be illustrated by the following example:

Example. Corporation A has held 85 of the 100 outstanding shares of the stock of Corporation B for more than five years on the date of distribution. Six months before such date, it purchased 10 shares of such stock. If all of the stock of the controlled corporation owned by Corporation A is distributed, section 355 is not applicable to such distribution since the 10 shares would represent "other property." (See, however, section 356.) If, however, for proper business reasons it is decided to retain some of the stock of Corporation B, then the determination of the amount of such stock which must be distributed under section 355 (a) (1) (D) in order to constitute a distribution to which section 355 is applicable must be made by reference to all of the stock of the controlled corporation including the 10 shares acquired six months before such date and the 5 shares owned by others. A similar rule is applicable if, by the use of any agency, the distributing corporation acquires stock of the controlled corporation within five years of the date of distribution, for example, where another subsidiary purchases such stock. If Corporation A had held only 75 of the 100 outstanding shares of stock of Corporation B for more than five years on the date of distribution and had purchased the remaining 25 shares six months before such date, neither section 355 nor section 356 would be applicable.

(g) **Active businesses.** The rules of section 355 (b) and § 1.355-4, relating to active businesses, must be satisfied.

§ 1.355-3 **Non prorata distributions, etc.** (a) The rule of section 355 (a) (1) prescribing that gain or loss will not be recognized applies whether or not the distribution is prorata with respect to the interests of all the shareholders in the distributing corporation provided all other requirements of section 355 are satisfied. For example, if two individuals, A and B, own all of the stock of Corporation X which operates two active businesses, one business may be transferred to a new corporation in exchange for all of its stock and such stock distributed to either A or B in exchange for all of his stock of Corporation X. Similarly, if, in the above example, only a part of the stock of the new corporation is transferred to one of the shareholders in exchange for all of his stock of Corporation X and the balance of such stock is distributed to the other shareholder (whether or not such other shareholder surrenders stock in Corporation X), no gain or loss will be recognized. The same rule will be applicable if the stock of an existing controlled corporation is distributed to the shareholders even though such distribution is not pursuant to a plan of reorganization.

(b) The stock of the controlled corporation which is distributed may consist of either common or preferred stock. See, however, section 306 with respect to the receipt of preferred stock in a transaction to which section 355 is applicable.

§ 1.355-4 **Active conduct of a trade or business.** (a) A distribution of stock or securities of a controlled corporation is subject to section 355 (a) only, if:

(1) The distributing corporation and the controlled corporation are each engaged in the active conduct of a trade or business immediately after the distribution of stock or securities of a controlled corporation; or

(2) Immediately before the distribution the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged in the active conduct of a trade or business immediately after the distribution. In connection with the requirement of "no assets" a de minimis rule will be applied.

(3) These rules are illustrated by the following examples:

Example (1). Corporation A, prior to the distribution, operates an active business and owns all of the stock of Corporation B which also is engaged in the active conduct of a business. Corporation A distributes all of the stock of Corporation B to its shareholders, and both continue the operations of their separate businesses. The active business requirement of section 355 (b) (1) (A) is satisfied.

Example (2). The facts are the same as in example (1), except that Corporation A transfers its active business to a new corporation in exchange for all of its stock and transfers the stock of both controlled corporations to its shareholders. The active business requirement of section 355 (b) (1) (B) is satisfied.

(b) (1) Section 355 (b) (2) provides rules for determining whether any corporation is engaged in the active conduct of a trade or business for purposes of determining the application of section 355 (b) (1). Thus, in a case to which section 355 (b) (1) (A) is applicable, both the distributing corporation and the controlled corporation must be engaged in the active conduct of a trade or business immediately after the distribution. Under section 355 (b) (2) (A), either corporation may be said to be engaged in the active conduct of a trade or business if it is itself engaged in such a trade or business or if substantially all of its assets consist of the stock and securities of a controlled corporation which is engaged in the active conduct of a trade or business. Regardless of whether the determination is based upon a corporation's own conduct of a trade or business or on the basis of its ownership of the stock of a corporation which conducts such a trade or business, such trade or business must have been actively conducted for the five-year period immediately preceding the date of distribution of the stock and securities of the controlled corporation the stock of which was distributed, and such trade or business must not have been acquired by either corporation during such five-year period unless it was acquired in a transaction in which gain or loss was not recognized. In addition, the indirect acquisition of such business during such five-year period by means of the acquisition, in a transaction in which gain or loss was recognized, of control of another corporation is prohibited by section 355 (b) (2) (D). This provision requires that during the five-year period during which the trade or business must be actively conducted, such business cannot have been acquired, directly or indirectly, through another corporation by such other corporation or any of its predecessors in interest in a transaction in which gain or loss was recognized in whole or in part.

(2) Paragraph (b) (1) of this section may be illustrated by the following example:

Example. In 1956, Corporation B, having cash and other liquid assets and engaged in only one active business purchases all of the stock of Corporation A, also engaged in a single active business. Later in the same year, Corporation B in a "downstairs" statutory merger merges into Corporation A. In 1958, Corporation A places the assets of the active business formerly operated by Corporation B in a new subsidiary X. A distribution of the stock of Corporation X to the stockholders of Corporation A is not within the terms of section 355, since one of the active businesses had, in effect, been purchased less than five years prior to the distribution.

(3) For the purpose of determining whether such trade or business has been actively conducted throughout the five-year period described in section 355 (b) (2), the fact that during such five-year period such trade or business underwent change (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded provided the changes are not of such a character as to constitute the acquisition of a new or different business.

§ 1.355-5 **Records to be kept and information to be filed.** (a) Every corporation that makes a distribution of stock or securities of a controlled corporation, as described in section 355, shall attach to its return for the year of the distribution a detailed statement setting forth such data as may be appropriate in order to show compliance with the provisions of such section.

(b) Every taxpayer who receives a distribution of stock or securities of a corporation that was controlled by a corporation in which he holds stock or securities shall attach to his return for the year in which such distribution is received a detailed statement setting forth such data as may be appropriate in order to show the applicability of section 355. Such statement shall include, but shall not be limited to, a description of the stock and securities surrendered (if any) and received, and the names and addresses of all of the corporations involved in the transaction.

§ 1.356 **Statutory provisions; receipt of additional consideration.**

Sec. 356. **Receipt of additional consideration—(a) Gain on exchanges—(1) Recognition of gain.** If—

(A) Section 354 or 355 would apply to an exchange but for the fact that

(B) The property received in the exchange consists not only of property permitted by section 354 or 355 to be received without the recognition of gain but also of other property or money,

then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) **Treatment as dividend.** If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913.

The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

(b) Additional consideration received in certain distributions. If—

(1) Section 355 would apply to a distribution but for the fact that

(2) The property received in the distribution consists not only of property permitted by section 355 to be received without the recognition of gain, but also of other property or money,

then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 301 applies.

(c) Loss. If—

(1) Section 354 would apply to an exchange, or section 355 would apply to an exchange or distribution, but for the fact that

(2) The property received in the exchange or distribution consists not only of property permitted by section 354 or 355 to be received without the recognition of gain or loss, but also of other property or money,

then no loss from the exchange or distribution shall be recognized.

(d) Securities as other property. For purposes of this section—

(1) In general. Except as provided in paragraph (2), the term "other property" includes securities.

(2) Exceptions—(A) Securities with respect to which nonrecognition of gain would be permitted. The term "other property" does not include securities to the extent that, under section 354 or 355, such securities would be permitted to be received without the recognition of gain.

(B) Greater principal amount in section 354 exchange. If—

(i) In an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) The principal amount of such securities received exceeds the principal amount of such securities surrendered,

then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C), if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(C) Greater principal amount in section 355 transaction. If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

(e) Exchanges for section 306 stock. Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

(f) Transactions involving gift or compensation. For special rules for a transaction described in section 354, 355, or this section, but which—

(1) Results in a gift, see section 2501 and following, or

(2) Has the effect of the payment of compensation, see section 61 (a) (1).

§ 1.356-1 Receipt of additional consideration in connection with an exchange. (a) If in any transaction to which the provisions of section 354 (re-

lating to exchanges of stock and securities in certain reorganizations) or section 355 (relating to distributions of stock and securities of a controlled corporation) would apply except for the fact that there is received by the shareholders or the security holders other property (in addition to property permitted to be received without recognition of gain) or money, then—

(1) The gain, if any, to the taxpayer shall be recognized in an amount not in excess of the sum of the money and the fair market value of the other property, but,

(2) The loss, if any, to the taxpayer from the exchange or distribution is not to be recognized to any extent.

(b) If the distribution of such other property or money by or on behalf of a corporation has the effect of the distribution of a dividend, then there shall be chargeable to each distributee (either an individual or a corporation)—

(1) As a dividend, such an amount of the gain recognized as is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, and

(2) As a gain from the exchange of property, the remainder of the gain so recognized.

(c) The rules of this section may be illustrated by the following examples:

Example (1). In an exchange to which the provisions of section 356 apply, A (either an individual or a corporation) received the following in exchange for a share of stock having an adjusted basis to him of \$85:

One share of stock worth	\$100
Cash	25
Other property (basis \$25) fair market value	50

Total fair market value of consideration received	175
Adjusted basis of stock surrendered in exchange	85

Total gain	90
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Gain to be recognized, limited to cash and other property received	75
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A's pro rata share of earnings and profits accumulated after February 28, 1913 (taxable dividend)	30
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Remainder to be treated as a gain from the exchange of property	45
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Example (2). If, in example (1), A's stock had an adjusted basis to him of \$200, he would have realized a loss of \$25 on the exchange, which loss would not be recognized.

§ 1.356-2 Receipt of additional consideration not in connection with an exchange. (a) If, in a transaction described in section 355, a shareholder (individual or corporate) receives property permitted by section 355 to be received without the recognition of gain,

together with other property or money, without the surrender of any stock or securities of the distributing corporation, then the sum of the money and the fair market value of the other property as of the date of the distribution shall be treated as a distribution of property to which the rules of section 301 (other than section 301 (b) and section 301 (d)) apply. See section 358 for deter-

mination of basis of such other property.

(b) The rule under paragraph (a) of this section may be illustrated by the following examples:

Example (1). Individuals A and B each own 50 of the 100 outstanding shares of common stock of Corporation X. Corporation X owns all of the stock of Corporation Y, 100 shares. Corporation X distributes 50 shares of the stock of Corporation Y plus \$100 cash to each shareholder without requiring the surrender of any shares of its own stock. The \$100 cash received by each is treated as a distribution of property to which the rules of section 301 apply.

Example (2). If, in the above example, Corporation X distributes 50 shares of stock of Corporation Y to A and 30 shares of such stock plus \$100 cash to B without requiring the surrender of any of its own stock, the amount of cash received by B is treated as a distribution of property to which the rules of section 301 apply.

§ 1.356-3 Rules for treatment of securities as "other property". (a) As a general rule, for purposes of section 356, the term "other property" includes securities. However, it does not include securities permitted under section 354 or section 355 to be received tax free. Thus, when securities are surrendered in a transaction to which section 354 or section 355 is applicable, the characterization of the securities received as "other property" does not include securities received where the principal amount of such securities does not exceed the principal amount of securities surrendered in the transaction. If a greater principal amount of securities is received in an exchange described in section 354 (other than subsection (c) thereof) or section 355 over the principal amount of securities surrendered, the term "other property" includes the fair market value of such excess principal amount as of the date of the exchange. If no securities are surrendered in exchange, the term "other property" includes the fair market value, as of the date of receipt, on the entire principal amount of the securities received.

(b) The following examples illustrate the application of the above rules:

Example (1). A, an individual, exchanged 100 shares of stock for 100 shares of stock and a security in the principal amount of \$1,000 with a fair market value of \$990. The amount of \$990 is treated as "other property."

Example (2). B, an individual, exchanged 100 shares of stock and a security in the principal amount of \$1,000 for 300 shares of stock and a security in the principal amount of \$1,500. The security had a fair market value on the date of receipt of \$1,575. The fair market value of the excess principal amount, or \$525, is treated as "other property."

Example (3). C, an individual, exchanged a security in the principal amount of \$1,000 for 100 shares of stock and a security in the principal amount of \$900. No part of the security received is treated as "other property."

Example (4). D, an individual, exchanged a security in the principal amount of \$1,000 for 100 shares of stock and a security in the principal amount of \$1,200 with a fair market value of \$1,100. The fair market value of the excess principal amount, or \$183.33, is treated as "other property."

Example (5). E, an individual, exchanged a security in the principal amount of \$1,000 for another security in the principal amount of \$1,200 with a fair market value of \$1,089.

The fair market value of the excess principal amount, or \$180, is treated as "other property."

Example (6). P, an individual, exchanged a security in the principal amount of \$1,000 for two different securities each in the principal amount of \$750. One of the securities had a fair market value of \$750, the other had a fair market value of \$600. One-third of the fair market value of each security (\$250 and \$200) is treated as "other property."

§ 1.356-4 Exchanges for section 306 stock. If, in a transaction to which section 356 is applicable, other property or money is received in exchange for section 306 stock, an amount equal to the fair market value of the property plus the money, if any, shall be treated as a distribution of property to which section 301 is applicable. The determination of whether section 306 stock is surrendered for other property (including money) is a question of fact to be decided under all of the circumstances of each case. Ordinarily, the other property (including money) received will first be treated as received in exchange for any section 306 stock owned by a shareholder prior to such transaction.

§ 1.356-5 Transactions involving gift or compensation. With respect to transactions described in sections 354, 355, or 356, but which—

(a) Result in a gift, see section 2501 and following, and the regulations pertaining thereto, or

(b) Have the effect of the payment of compensation, see section 61 (a) (1), and the regulations pertaining thereto.

§ 1.357 Statutory provisions; assumption of liability.

Sec. 357. Assumption of liability—(a) General rule. Except as provided in subsections (b) and (c), if—

(1) The taxpayer receives property which would be permitted to be received under section 351, 361, or 371 without the recognition of gain if it were the sole consideration, and

(2) As part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability,

then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351, 361, or 371, as the case may be.

(b) Tax avoidance purpose—(1) In general. If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in subsection (a)—

(A) Was a purpose to avoid Federal income tax on the exchange, or

(B) If not such purpose, was not a bona fide business purpose,

then such assumption or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall, for purposes of section 351, 361, or 371 (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) Burden of proof. In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) Liabilities in excess of basis—(1) In general. In the case of an exchange—

(A) To which section 351 applies, or
(B) To which section 361 applies by reason of a plan or reorganization within the meaning of section 368 (a) (1) (D),

if the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Exceptions. Paragraph (1) shall not apply to any exchange to which—

(A) Subsection (b) (1) of this section applies, or

(B) Section 371 applies.

§ 1.357-1 Assumption of liability—

(a) General rule. Section 357 (a) does not affect the rule that liabilities assumed are to be taken into account for the purpose of computing the amount of gain or loss realized under section 1001 upon an exchange. Section 357 (a) provides, subject to the exceptions and limitations specified in section 357 (b) and (c), that—

(1) Liabilities assumed are not to be treated as "other property or money" for the purpose of determining the amount of realized gain which is to be recognized under sections 351, 361, or 371, if the transactions would, but for the receipt of "other property or money" have been exchanges of the type described in any one of such sections; and

(2) If the only type of consideration received by the transferor in addition to that permitted to be received by sections 351, 361, or 371, consists of an assumption of liabilities, the transaction, if otherwise qualified, will be deemed to be within the provisions of sections 351, 361, or 371.

(b) Application of general rule. The application of paragraph (a) of this section may be illustrated by the following example:

Example. A, an individual, transfers to a controlled corporation property with an adjusted basis of \$10,000 in exchange for stock of the corporation with a fair market value of \$8,000, \$3,000 cash, and the assumption by the corporation of indebtedness of A amounting to \$4,000. A's gain is \$5,000, computed as follows:

Stock received, fair market value.....	\$8,000
Cash received.....	3,000
Liability assumed by transferee.....	4,000
Total consideration received.....	15,000
Less: Adjusted basis of property transferred.....	10,000
Gain realized.....	5,000

Assuming that the exchange falls within section 351 as a transaction in which the gain to be recognized is limited to "other property or money" received, the gain recognized to A will be limited to the \$3,000 cash received, since, under the general rule of section 357 (a), the assumption of the \$4,000 liability does not constitute "other property."

(c) Tax avoidance purpose. The benefits of section 357 (a) do not extend to any exchange involving an assumption of liabilities where it appears that the principal purpose of the taxpayer with respect to such assumption was to avoid Federal income tax on the exchange, or, if not such purpose, was not

a bona fide business purpose. In such cases, the total amount of liabilities assumed or acquired pursuant to such exchange (and not merely a particular liability with respect to which the tax avoidance purpose existed) shall, for the purpose of determining the amount of gain to be recognized upon the exchange in which the liabilities are assumed or acquired, be treated as money received by the taxpayer upon the exchange. Thus, if in the example set forth in paragraph (b) of this section, the principal purpose of the assumption of the \$4,000 liability was to avoid tax on the exchange, or was not a bona fide business purpose, then the amount of gain recognized would be \$5,000. In any suit or proceeding where the burden is on the taxpayer to prove that an assumption of liabilities is not to be treated as "other property or money" under section 357, which is the case if the Commissioner determines that the taxpayer's purpose with respect thereto was a purpose to avoid Federal income tax on the exchange or was not a bona fide business purpose, and the taxpayer contests such determination by litigation, the taxpayer must sustain such burden by the clear preponderance of the evidence. Thus, the taxpayer must prove his case by such a clear preponderance of all the evidence that the absence of a purpose to avoid Federal income tax on the exchange, or the presence of a bona fide business purpose, is unmistakable.

§ 1.357-2 Liabilities in excess of basis.

(a) Section 357 (c) provides in general that in an exchange to which section 351 (relating to a transfer to a corporation controlled by the transferor) is applicable, or to which section 361 (relating to the nonrecognition of gain or loss to corporations) is applicable by reason of a section 368 (a) (1) (D) reorganization, if the sum of the amount of liabilities assumed plus the amount of liabilities to which the property is subject, exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset as the case may be. Thus, if an individual transfers, under section 351, property having a basis in his hands of \$20,000, but subject to a mortgage of \$30,000, to a corporation controlled by him, such individual will be subject to tax with respect to \$10,000, the excess of the amount of the liability over the adjusted basis of the property in his hands. The same result will follow whether or not the liability is assumed by the transferee. The determination of whether a gain resulting from the transfer of capital assets is long or short-term capital gain shall be made by reference to the holding period to the transferor of the assets transferred. An exception to the general rule of section 357 (c) is made (1) for any exchange as to which under section 357 (b) (relating to assumption of liabilities for tax avoidance purposes) the entire amount of the liabilities is treated as money received, and (2) for an exchange to which section 371 (relating to reorganizations in certain receivership and bankruptcy proceedings) is applicable.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). If all such assets transferred are capital assets and if half the assets (ascertained by reference to their fair market value at the time of the transfer) have been held for less than 6 months and the remaining half for more than 6 months, half the excess of the amount of the liability over the total of the adjusted basis of the property transferred pursuant to the exchange shall be treated as short-term capital gain, and the remaining half shall be treated as long-term capital gain.

Example (2). If half of the assets (ascertained by reference to their fair market value at the time of the transfer) transferred are capital assets and half are assets other than capital assets, then half of the excess of the amount of the liability over the total of the adjusted basis of the property transferred pursuant to the exchange shall be treated as capital gain, and the remaining half shall be treated as gain from the sale or exchange of assets other than capital assets.

§ 1358 Statutory provisions; basis to distributees.

Sec. 358. Basis to distributees—(a) General rule. In the case of an exchange to which section 351, 354, 355, 356, 361 or 371 (b) applies—

(1) **Nonrecognition property.** The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) Decreased by—
(i) The fair market value of any other property (except money) received by the taxpayer, and
(ii) The amount of any money received by the taxpayer, and
(B) Increased by—

(i) The amount which was treated as a dividend, and
(ii) The amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) **Other property.** The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) **Allocation of basis—(1) In general.** Under regulations prescribed by the Secretary or his delegate, the basis determined under subsection (a) (1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) **Special rule for section 355.** In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) **Section 355 transactions which are not exchanges.** For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) **Assumption of liability.** Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this

section, be treated as money received by the taxpayer on the exchange.

(e) **Exception.** This section shall not apply to property acquired by a corporation by the issuance of its stock or securities as a consideration in whole or in part for the transfer of the property to it.

§ 1358-1 **Basis to distributees.** (a) In the case of an exchange or distribution to which section 354, 355, or 371 (b) applies in which, under the law applicable to the year in which the exchange is made, only nonrecognition property is received, the basis of all of the stock and securities in the corporation whose stock and securities are exchanged held immediately after the transaction (whether or not received in the transaction) shall be the same as the basis of all the stock and securities in such corporation held immediately before the transaction allocated in the manner described in section 1358-2. In the case of an exchange to which section 351 or 361 applies in which, under the law applicable to the year in which the exchange was made, only nonrecognition property is received, the basis of all the stock and securities received in the exchange shall be the same as the basis of all the property exchanged therefor. If in an exchange or distribution to which section 351, 356, 361, or 371 (b) applies both nonrecognition property and "other property" is received, the basis of all the property except "other property" held after the transaction shall be determined as described in the preceding two sentences decreased by the sum of the money and the fair market value of the "other property" (as of the date of the transaction) and increased by the sum of the amount treated as a dividend (if any) and the amount of the gain recognized on the exchange, but the term "gain" as here used does not include any portion of the recognized gain that was treated as a dividend. The basis of the "other property" is its fair market value as of the date of the transaction.

(b) The application of paragraph (a) of this section may be illustrated by the following example:

Example. A purchased a share of stock in Corporation X in 1935 for \$150. Since that date he has received distributions out of other than earnings and profits (as defined in section 316) totalling \$60, so that his adjusted basis for the stock is \$90. In a transaction qualifying under section 356, A exchanged this share for one share in Corporation Y, worth \$100, cash in the amount of \$10, and other property with a fair market value of \$30. The exchange had the effect of the distribution of a dividend. A's ratable share of the earnings and profits of Corporation Y accumulated after February 28, 1913, was \$5. A realized a gain of \$50 on the exchange, but the amount recognized is limited to \$40, the sum of the cash received and the fair market value of the other property. Of the gain recognized, \$5 is taxable as a dividend, and \$35 as a gain from the exchange of property. The basis to A of the one share of stock of Corporation Y is \$90, that is, the adjusted basis of the one share of stock of Corporation X (\$90), decreased by the sum of the cash received (\$10) and the fair market value of the other property received (\$30) and increased by the sum of the amount treated as a dividend (\$5) and the amount treated as a gain from the exchange of property (\$35). The basis of the other property received is \$30.

§ 1358-2 **Allocation of basis among nonrecognition property.** (a) (1) As

used in this section the term "stock" means stock which is not other property under section 356 or 371 (b), stock with respect to which a distribution is made, and, in the case of a surrender of part of a class of stock, the retained part of such stock. The term "securities" means securities (including, where appropriate, fractional parts of securities) which are not other property under section 356 or 371 (b) and in the case of a surrender of part of a class of securities, the retained part of such securities.

(2) If as the result of an exchange or distribution under the terms of section 354, 355, 356 or 371 (b) a shareholder who owned only one class of stock before the transaction owns two or more classes of stock after the transaction, then the basis of all the stock held before the transaction (as adjusted under § 1358-1 above) shall be allocated among all the classes of stock (whether or not received in the transaction) held immediately after the transaction in proportion to their respective fair market values at that time.

(3) If as the result of an exchange under the terms of section 354, 355, 356 or 371 (b) a security holder who owned only one class of securities before the transaction, owns more than one class of securities or stock, or owns at least one class of securities together with at least one class of stock, then the basis of all the securities held before the transaction (as adjusted under § 1358-1 above) shall be allocated among all the classes of stock and securities (whether or not received in the transaction) held immediately after the transaction in proportion to their fair market values at that time.

(4) In every case in which, before the transactions, a person owned more than one class of stock or securities or owned at least one class of stock together with at least one class of securities, a determination must be made upon the basis of all the facts of the stock or securities received with respect to each class of stock or securities held (whether or not surrendered). The allocation described in subparagraph (2) above shall be separately made as to each class of stock with respect to which there is an exchange or distribution and the allocation described in subparagraph (3) above shall be separately made with respect to each class of securities, part or all of which are surrendered in an exchange.

(5) Notwithstanding the provisions of subparagraphs (2), (3) and (4) above in any case in which a plan of recapitalization under section 368 (a) (1) (E) provides that each holder of a particular class of stock or securities shall have an option to surrender some or none of such stock or securities in exchange for stock or securities, and a shareholder or security holder exchanges an identifiable part of his stock or securities, the basis of the part of the stock or securities retained shall remain unchanged and shall not be taken into account in determining the basis of the stock or securities received.

(b) (1) As used in this section the term "stock" refers only to stock which is not "other property" under section 351 or 361 and the term "securities" re-

fers only to securities which are not "other property" under section 351 or 361.

(2) If in an exchange to which section 351 or 361 applies property is transferred to a corporation and the transferor receives more than one class of stock or securities, or receives at least one class of stock together with at least one class of securities, then the basis of the property transferred (as adjusted under § 1.358-1 above) shall be allocated among all the classes of stock and securities received in proportion to their respective fair market values.

(c) The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). A, an individual, owns stock in Corporation X with an adjusted basis of \$1,000. In a transaction qualifying under section 356 (so far as such section relates to section 354), he exchanged this stock for 20 shares of stock of Corporation Y worth \$1,200 and securities of Corporation Y worth \$400. A realizes a gain of \$600 of which \$400 is recognized. The adjusted basis in A's hands of each share of the stock of Corporation Y is \$50 determined by allocating the basis of the stock of Corporation X ratably to the stock of Corporation Y received in the exchange. The securities of Corporation Y have a basis in the hands of A of \$400.

Example (2). B, an individual, owns a security in the principal amount of \$10,000 with a basis of \$5,000. In a transaction to which section 354 is applicable, he exchanges this security for four securities in the principal amount of \$750 each, worth \$800 each, four securities in the principal amount of \$750 each, worth \$600 each, class A common stock worth \$1,000, and class B common stock worth \$400. B realizes a gain of \$2,000 none of which is recognized. The basis of his original security, \$5,000, will be allocated 32/70ths to the four securities worth \$800, 24/70ths to the four securities worth \$600, 10/70ths to the class A common stock, and 4/70ths to the class B common stock.

Example (3). C, an individual, owns stock of Corporation Y with a basis of \$5,000 and owns a security issued by Corporation Y in the principal amount of \$5,000 with a basis of \$5,000. In a transaction to which section 354 is applicable, he exchanges the stock of Corporation Y for stock of Corporation Z with a value of \$6,000, and he exchanges the security of Corporation Y for stock of Corporation Z worth \$1,500 and a security of Corporation Z in the principal amount of \$4,500 worth \$4,500. No gain is recognized to C on either exchange. The basis of the stock of Corporation Z received for the stock of Corporation Y is \$5,000. The bases of the stock and security of Corporation Z received in exchange for the security of Corporation Y are \$1,250 and \$3,750, respectively.

Example (4). D, an individual, owns stock in Corporation M with a basis of \$15,000, worth \$40,000, and owns a security issued by Corporation M in the principal amount of \$5,000 with a basis of \$4,000. In a transaction qualifying under section 356 (so far as such section relates to section 355), he exchanges the security of Corporation M for a security of Corporation O (a controlled corporation) in the principal amount of \$5,000, worth \$5,000, and exchanges one-half of his stock of Corporation M for stock of Corporation O worth \$15,000 and a security of Corporation O in the principal amount of \$5,000, worth \$5,000. All of the stock and securities of Corporation O are distributed pursuant to the transaction. D realizes a gain of \$12,500 on the exchange of the stock of Corporation M for the stock and security of Corporation O of which \$5,000 is recognized. D also realizes a gain of \$1,000 on the exchange of a security of

Corporation M for a security of Corporation O, none of which is recognized. The basis of his stock of Corporation M held before the transaction is allocated 20/35ths to the stock of Corporation M held after the transaction and 15/35ths to the stock of Corporation O. The basis of the security of Corporation O received in exchange for his security of Corporation M is \$4,000, the basis of the security of Corporation M exchanged. The basis of the security of Corporation O received with respect to D's stock of Corporation M is \$5,000, its fair market value.

§ 1.358-3 Treatment of assumption of liabilities. (a) For purposes of section 358, where a party to the exchange assumes a liability of a distributee or acquires from him property subject to a liability, the amount of such liability is to be treated as money received by the distributee upon the exchange, whether or not the assumption of liabilities resulted in a recognition of gain or loss to the taxpayer under the law applicable to the year in which the exchange was made.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A, an individual, owns property with an adjusted basis of \$100,000 on which there is a purchase money mortgage of \$25,000. On December 1, 1954, A organizes Corporation X to which he transfers the property in exchange for all the stock of Corporation X and the assumption by Corporation X of the mortgage. The capital stock of the Corporation X has a fair market value of \$150,000. Under sections 351 and 357, no gain or loss is recognized to A. The basis in A's hands of the stock of Corporation X is \$75,000, computed as follows:

Adjusted basis of property transferred	\$100,000
Less: Amount of money received (amount of liabilities assumed)	25,000
Basis of Corporation X stock to A	75,000

Example (2). A, an individual, owns property with an adjusted basis of \$25,000 on which there is a mortgage of \$50,000. On December 1, 1954, A organizes Corporation X to which he transfers the property in exchange for all the stock of Corporation X and the assumption by Corporation X of the mortgage. The stock of Corporation X has a fair market value of \$50,000. Under sections 351 and 357, gain is recognized to A in the amount of \$25,000. The basis in A's hands of the stock of Corporation X is zero, computed as follows:

Adjusted basis of property transferred	\$25,000
Less: Amount of money received (amount of liabilities)	50,000
Plus: Amount of gain recognized to taxpayer	25,000
Basis of Corporation X stock to A	0

§ 1.358-4 Exception. Section 358 does not apply in determining the basis of property acquired by a corporation by the issuance of its stock or securities (or by the issuance of stock or securities of another corporation which is in control of such corporation) as the consideration in whole or in part for the transfer of the property to it. See section 362 and the regulations pertaining to that section for rules relating to basis to corporations of property acquired in such cases.

§ 1.361 Statutory provisions; nonrecognition of gain or loss to corporations.

SEC. 361. Nonrecognition of gain or loss to corporations.—(a) *General rule.* No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) *Exchanges not solely in kind.*—(1) *Gain.* If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

(A) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(2) *Loss.* If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

§ 1.361-1 Nonrecognition of gain or loss to corporations. Section 361 provides the general rule that no gain or loss shall be recognized if a corporation, a party to a reorganization, exchanges property in pursuance of the plan of reorganization solely for stock or securities in another corporation, a party to the reorganization. This provision includes only stock and securities received in connection with a reorganization defined in section 368 (a). It also includes securities received in a transaction to which section 368 (a) (1) (C) is applicable only by reason of section 368 (b) (2) (B).

§ 1.362 Statutory provisions; basis to corporations.

SEC. 362. Basis to Corporations.—(a) *Property acquired by issuance of stock or as paid-in surplus.* If property was acquired on or after June 22, 1954, by a corporation—

(1) In connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) As paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) *Transfers to corporations.* If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(c) *Special rule for certain contributions to capital.*—(1) *Property other than money.*

Notwithstanding subsection (a) (2), if property other than money—

(A) Is acquired by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) Is not contributed by a shareholder as such, then the basis of such property shall be zero.

(2) Money. Notwithstanding subsection (a) (2), if money—

(A) Is received by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) Is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary or his delegate.

§ 1.362-1 Basis to corporations. Section 362 provides, as a general rule, that if property was acquired on or after June 22, 1954, by a corporation in connection with (a) a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, (b) as paid-in surplus or as a contribution to capital, or (c) in connection with a reorganization to which Part III of Subchapter C applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. Section 362 does not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the transferee as the consideration in whole or in part for the transfer. (See also § 1.362-2.)

§ 1.362-2 Certain contributions to capital. The following rules shall be used in the application of section 362 (c):

(a) Property deemed to be acquired with contributed money shall be that property, if any, the acquisition of which was the purpose motivating the contribution;

(b) In the case of an excess of the amount of money contributed over the cost of the property deemed to be acquired with such money (as defined in (a) of this section) such excess shall be applied to the reduction of the basis (but not below zero) of other properties held by the corporation, on the last day of the 12-month period beginning on the day the contribution is received, in the following order—

(1) All property of a character subject to an allowance for depreciation (not including any properties as to which a deduction for amortization is allowable),

(2) Property with respect to which a deduction for amortization is allowable,

(3) Property with respect to which a deduction for depletion is allowable under section 611 but not under section 613, and

(4) All other remaining properties.

The reduction of the basis of each of the properties within each of the above categories shall be made in proportion to the relative bases of such properties.

(c) With the consent of the Commissioner, the taxpayer may, however, have the basis of the various units of property within a particular category adjusted in a manner different from the general rule set forth in paragraph (b) of this section. Variations from such rule may, for example, involve adjusting the basis of only certain units of the taxpayer's property within a given category. A request for variations from the general rule should be filed by the taxpayer with its return for the taxable year for which the transfer of the property has occurred.

§ 1.363 Statutory provisions; effect on earnings and profits.

Sec. 363. Effect on earnings and profits. For rules relating to the effect on earnings and profits of transactions to which this part applies, see sections 312 and 381.

SPECIAL RULES; DEFINITIONS

§ 1.367 Statutory provisions; foreign corporations.

Sec. 367. Foreign corporations. In determining the extent to which gain shall be recognized in the case of any of the exchanges described in section 332, 351, 354, 355, 356, or 361, a foreign corporation shall not be considered as a corporation unless, before such exchange, it has been established to the satisfaction of the Secretary or his delegate that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

§ 1.367-1 Foreign corporations. Whether any one of the exchanges or distributions described in section 332, 351, 354, 355, 356, or 361, involving a foreign corporation, is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax, is a question of fact. In any such case if a taxpayer desires to establish that an exchange or distribution is not in pursuance of such a plan, a statement under oath of the facts and circumstances relating to the plan under which the exchange or distribution is to be made, together with a copy of the plan, shall be forwarded to the Commissioner of Internal Revenue, Washington 25, D. C., for a ruling. A letter setting forth the Commissioner's determination will be mailed to the taxpayer. If the Commissioner determines that the exchange or distribution is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax, the taxpayer should retain a copy of the Commissioner's letter as authority for treating the foreign corporation as a corporation in determining the extent to which gain is recognized from the exchange or distribution. If the transaction is not carried out in accordance with the plan submitted, the Commissioner's approval will not render the transaction tax-free.

§ 1.368 Statutory provisions; definitions relating to corporate reorganizations.

Sec. 368. Definitions relating to corporate reorganizations—(a) Reorganization—(1) In general. For purposes of parts I and II and this part, the term "reorganization" means—

(A) A statutory merger or consolidation;

(B) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(D) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) A recapitalization; or

(F) A mere change in identity, form, or place of organization, however effected.

(2) Special rules relating to paragraph (1)—(A) Reorganizations described in both paragraph (1) (C) and paragraph (1) (D). If a transaction is described in both paragraph (1) (C) and paragraph (1) (D), then, for purposes of this subchapter, such transaction shall be treated as described only in paragraph (1) (D).

(B) Additional consideration in certain paragraph (1) (C) cases. If—

(i) One corporation acquires substantially all of the properties of another corporation,

(ii) The acquisition would qualify under paragraph (1) (C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) The acquiring corporation acquires, solely for voting stock described in paragraph (1) (C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1) (C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C) Transfers of assets to subsidiaries in certain paragraph (1) (A) and (1) (C) cases. A transaction otherwise qualifying under paragraph (1) (A) or paragraph (1) (C) shall not be disqualified by reason of the fact that part or all of the assets which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets.

(b) Party to a reorganization. For purposes of this part, the term "a party to a reorganization" includes—

(1) A corporation resulting from a reorganization, and

(2) Both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (1) (C) of subsection (a), if the stock exchanged for the properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1) (A) or (1) (C) of subsection (a) by reason of paragraph (2) (C) of subsection (a), the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets are transferred.

(c) *Control.* For purposes of part I (other than section 304), part II, and this part, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

§ 1.368-1 Purpose and scope of exception of reorganization exchanges—(a) Reorganizations. As used in the regulations under Parts I, II, and III of Subchapter C of the Internal Revenue Code of 1954, the terms "reorganization" and "party to a reorganization" mean only a reorganization or a party to a reorganization as defined in subsections (a) and (b) of section 368. With respect to insolvency reorganizations, see Part IV of Subchapter C of the Internal Revenue Code of 1954.

(b) *Purpose.* Under the general rule, upon the exchange of property, gain or loss must be accounted for if the new property differs in a material particular, either in kind or in extent, from the old property. The purpose of the reorganization provisions of the Internal Revenue Code is to except from the general rule certain specifically described exchanges incident to such readjustments of corporate structures made in one of the particular ways specified in the Code, as are required by business exigencies and which effect only a readjustment of continuing interest in property under modified corporate forms. Requisite to a reorganization under the Code are a continuity of the business enterprise under the modified corporate form, and (except as provided in section 368 (a) (1) (D)) a continuity of interest therein on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization. The Code recognizes as a reorganization the change (made in a specified way) from a business enterprise conducted by a single corporation to the same business enterprise conducted by a parent and a subsidiary corporation, but not the creation of a temporary subsidiary as a device for the making of an ordinary dividend. The Code recognizes as a reorganization the amalgamation (occurring in a specified way) of two corporate enterprises under a single corporate structure if there exists among the holders of the stock and securities of either of the old corporations the requisite continuity of interest in the new corporation, but there is not a reorganization if the holders of the stock and securities of the old corporation are merely the holders of short term notes in the new corporation. In order

to exclude transactions not intended to be included, the specifications of the reorganization provisions of the law are precise. Both the terms of the specifications and their underlying assumptions and purposes must be satisfied in order to entitle the taxpayer to the benefit of the exception from the general rule. Accordingly, under the Code, a short term purchase money note is not a security of a party to a reorganization, an ordinary dividend is to be treated as an ordinary dividend, and a sale is nevertheless to be treated as a sale even though the mechanics of a reorganization have been set up.

(c) *Scope.* The nonrecognition of gain or loss is prescribed for two specifically described types of exchanges, viz: The exchange that is provided for in section 354 (a) (1) in which stock or securities in a corporation, a party to a reorganization, are, in pursuance of a plan of reorganization, exchanged for the stock or securities in a corporation, a party to the same reorganization; and the exchange that is provided for in section 361 (a) in which a corporation, a party to a reorganization, exchanges property, in pursuance of a plan of reorganization, for stock or securities in another corporation, a party to the same reorganization. Section 368 (a) (1) limits the definition of the term "reorganization" to six kinds of transactions and excludes all others. From its context, the term "a party to a reorganization" can only mean a party to a transaction specifically defined as a reorganization by section 368 (a). Certain rules respecting boot received in either of the two types of exchanges provided for in section 354 (a) (1) and section 361 (a) are prescribed in sections 356, 357, and 361 (b). A special rule respecting a transfer of property with a liability in excess of its basis is prescribed in section 357 (c). Under section 367 a limitation is placed on all these provisions by providing that except under specified conditions foreign corporations shall not be deemed within their scope. The provisions of the Internal Revenue Code referred to in this paragraph are inapplicable unless there is a plan of reorganization. A plan of reorganization must contemplate the bona fide execution of one of the transactions specifically described as a reorganization in section 368 (a) and for the bona fide consummation of each of the requisite acts under which nonrecognition of gain is claimed. Such transaction and such acts must be an ordinary and necessary incident of the conduct of the enterprise and must provide for a continuation of the enterprise. A scheme, which involves an abrupt departure from normal reorganization procedure in connection with a transaction on which the imposition of tax is imminent, such as a mere device that puts on the form of a corporate reorganization as a disguise for concealing its real character, and the object and accomplishment of which is the consummation of a preconceived plan having no business or corporate purpose, is not a plan of reorganization.

§ 1.368-2 Definition of terms. (a) The application of the term "reorganiza-

tion" is to be strictly limited to the specific transactions set forth in section 368 (a). The term does not embrace the mere purchase by one corporation of the properties of another corporation, for it imports a continuity of interest on the part of the transferor or its shareholders in the properties transferred. If the properties are transferred for cash and deferred payment obligations of the transferee evidenced by short-term notes, the transaction is a sale and not an exchange in which gain or loss is not recognized.

(b) The words "statutory merger or consolidation" refer to a merger or consolidation effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia.

(c) In order to qualify as a "reorganization" under section 368 (a) (1) (B), the acquisition by the acquiring corporation of stock of another corporation must be in exchange solely for all or a part of the voting stock of the acquiring corporation, and the acquiring corporation must be in control of the other corporation immediately after the transaction. If, for example, Corporation X, in one transaction exchanges nonvoting preferred stock or bonds in addition to all or a part of its voting stock in the acquisition of stock of Corporation Y, the transaction is not a reorganization under section 368 (a) (1) (B). The acquisition of stock of another corporation by the acquiring corporation solely for its voting stock is permitted tax-free even though the acquiring corporation already owns some of the stock of the other corporation. Such an acquisition is permitted tax-free in a single transaction or in a series of transactions taking place over a relatively short period of time such as 12 months. For example, Corporation A purchased 30 percent of the common stock of Corporation W (the only class of stock outstanding) for cash in 1939. On March 1, 1955, Corporation A offers to exchange its own voting stock for all the stock of Corporation W tendered within 6 months from the date of the offer. Within the 6 months' period Corporation A acquires an additional 60 percent of the stock of Corporation W solely for its own voting stock, so that it owns 90 percent of the stock of Corporation W. No gain or loss is recognized with respect to the exchanges of stock of Corporation A for stock of Corporation W. For this purpose, it is immaterial whether such exchanges occurred before Corporation A acquired control (80 percent) of Corporation W or after such control was acquired. If Corporation A had acquired 80 percent of the stock of Corporation W for cash in 1939, it could likewise acquire some or all of the remainder of such stock solely in exchange for its own voting stock without recognition of gain or loss.

(d) In order to qualify as a reorganization under section 368 (a) (1) (C), the transaction must be one described in subparagraph (1) or (2) below:

(1) One corporation must acquire substantially all the properties of another corporation solely in exchange for all or a part of its own voting stock, or solely in exchange for all or a part of

the voting stock of a corporation which is in control of the acquiring corporation. For example, Corporation P owns all the stock of Corporation A. All the properties of Corporation W are transferred to Corporation A either solely in exchange for voting stock of Corporation P or solely in exchange for less than 80 percent of the voting stock of Corporation A. Either of such transactions constitutes a reorganization under section 368 (a) (1) (C). However, if the properties of Corporation W are acquired in exchange for voting stock of both Corporation P and Corporation A, the transaction will not constitute a reorganization under section 368 (a) (1) (C). In determining whether the exchange meets the requirement of "solely for voting stock", the assumption by the acquiring corporation of liabilities of the transferor corporation, or the fact that property acquired from the transferor corporation is subject to a liability, shall be disregarded. Though such an assumption does not prevent an exchange from being solely for voting stock for the purposes of the definition of a reorganization contained in section 368 (a) (1) (C), it may in some cases, however, so alter the character of the transaction as to place the transaction outside the purposes and assumptions of the reorganization provisions. Section 368 (a) (1) (C) does not prevent consideration of the effect of an assumption of liabilities on the general character of the transaction but merely provides that the requirement that the exchange be solely for voting stock is satisfied if the only additional consideration is an assumption of liabilities.

(2) One corporation—

(i) Must acquire substantially all of the properties of another corporation in such manner that the acquisition would qualify under (1) above, but for the fact that the acquiring corporation exchanges money, or other property in addition to such voting stock, and

(ii) Must acquire solely for voting stock (either of the acquiring corporation or of a corporation which is in control of the acquiring corporation) properties of the other corporation having a fair market value which is at least 80 percent of the fair market value of all the properties of the other corporation.

(3) For the purposes of subparagraph (2) (ii) only, a liability assumed or to which the properties are subject is considered money paid for the properties. For example, Corporation A has properties with a fair market value of \$100,000 and liabilities of \$10,000. In exchange for these properties, Corporation Y transfers its own voting stock, assumes the \$10,000 liabilities, and pays \$8,000 in cash. The transaction is a reorganization even though a part of the properties of Corporation A is acquired for cash. On the other hand, if the properties of Corporation A worth \$100,000, were subject to \$50,000 in liabilities, an acquisition of all the properties, subject to the liabilities, for any consideration other than solely voting stock would not qualify as a reorganization under this section since the liabilities alone are in excess of 20 percent of the fair market value of the properties. If the transaction would qualify under either (1) or

(2) above and also under section 368 (a) (1) (D), such transaction shall not be treated as a reorganization under section 368 (a) (1) (C).

(e) A "recapitalization", and therefore a reorganization, takes place if, for example:

(1) A corporation with \$200,000 par value of bonds outstanding, instead of paying them off in cash, discharges them by issuing preferred shares to the bondholders;

(2) There is surrendered to a corporation for cancellation 25 percent of its preferred stock in exchange for no par value common stock;

(3) A corporation issues preferred stock, previously authorized but unissued, for outstanding common stock;

(4) An exchange is made of a corporation's outstanding preferred stock, having certain priorities with reference to the amount and time of payment of dividends and the distribution of the corporate assets upon liquidation, for a new issue of such corporation's common stock having no such rights.

(5) An exchange is made of an amount of a corporation's outstanding preferred stock with dividends in arrears for a similar amount of a corporation's preferred stock plus an amount of stock (preferred or common) with respect to the amount of dividends in arrears. Such an exchange, however, is not a recapitalization if the total effect is substantially similar to the payment of the dividends due for the current and immediately preceding year upon the preferred stock exchanged.

(f) The term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in a transaction qualifying as a reorganization where one corporation acquires stock or properties of another corporation. A corporation remains a party to the reorganization although it transfers all or part of the assets acquired to a controlled subsidiary. A corporation controlling an acquiring corporation is a party to the reorganization when the stock of such controlling corporation is used in the acquisition of properties. Both corporations are parties to the reorganization if, under statutory authority, Corporation A is merged into Corporation B. All three of the corporations are parties to the reorganization if, pursuant to statutory authority, Corporation C and Corporation D are consolidated into Corporation E. Both corporations are parties to the reorganization if Corporation F transfers substantially all its assets to Corporation G in exchange for all or a part of the voting stock of Corporation G. All three corporations are parties to the reorganization if Corporation H transfers substantially all its assets to Corporation K in exchange for all or a part of the voting stock of Corporation L, which is in control of Corporation K. Both corporations are parties to the reorganization if Corporation M transfers all or a part of its assets to Corporation N in exchange for all or a part of the stock and securities of Corporation N, but only if (1) immediately after such transfer, Corporation M, or one or more of its shareholders (including persons who were shareholders immediately be-

fore such transfer), or any combination thereof, is in control of Corporation N, and (2) in pursuance of the plan, the stock and securities of Corporation N are transferred or distributed by Corporation M in a transaction in which gain or loss is not recognized under section 354 or 355, or is recognized only to the extent provided in section 356.

(g) The term "plan of reorganization" has reference to a consummated transaction specifically defined as a reorganization under section 368 (a). The term is not to be construed as broadening the definition of "reorganization" as set forth in section 368 (a), but is to be taken as limiting the nonrecognition of gain or loss to such exchanges or distributions as are directly a part of the transaction specifically described as a reorganization in section 368 (a). Moreover, the transaction, or series of transactions, embraced in a plan of reorganization must not only come within the specific language of section 368 (a), but the readjustments involved in the exchanges or distributions effected in the consummation thereof must be undertaken for reasons germane to the continuance of the business of a corporation a party to the reorganization. Section 368 (a) contemplates genuine corporate reorganizations which are designed to effect a readjustment of continuing interests under modified corporate forms.

(h) As used in section 368, as well as in other provisions of the Internal Revenue Code, if the context so requires, the conjunction "or" denotes both the conjunctive and the disjunctive, and the singular includes the plural. For example, the provisions of the statute are complied with if "stock and securities" are received in exchange as well as if "stock or securities" are received.

§ 1.368-3 *Records to be kept and information to be filed with returns.* (a) The plan of reorganization must be adopted by each of the corporations parties thereto; and the adoption must be shown by the acts of its duly constituted responsible officers, and appear upon the official records of the corporation. Each corporation, a party to a reorganization, shall file as a part of its return for its taxable year within which the reorganization occurred a complete statement of all facts pertinent to the nonrecognition of gain or loss in connection with the reorganization, including:

(1) A certified copy of the plan of reorganization, together with a statement under oath or affirmation showing in full the purposes thereof and in detail all transactions incident to, or pursuant to, the plan.

(2) A complete statement of the cost or other basis of all property, including all stock or securities, transferred incident to the plan.

(3) A statement of the amount of stock or securities and other property or money received from the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities and other property received shall be stated on the basis of the fair market value thereof at the date of the exchange.

(4) A statement of the amount and nature of any liabilities assumed upon

the exchange, and the amount and nature of any liabilities to which any of the property acquired in the exchange is subject.

(b) Every taxpayer, other than a corporation a party to the reorganization, who receives stock or securities and other property or money upon a tax-free exchange in connection with a corporate reorganization shall incorporate in his income tax return for the taxable year in which the exchange takes place a complete statement of all facts pertinent to the nonrecognition of gain or loss upon such exchange including:

(1) A statement of the cost or other basis of the stock or securities transferred in the exchange, and

(2) A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liabilities assumed upon the exchange, and any liabilities to which property received is subject. The amount of each kind of stock or securities and other property (other than liabilities assumed upon the exchange) received shall be set forth upon the basis of the fair market value thereof at the date of the exchange.

(c) Permanent records in substantial form shall be kept by every taxpayer who participates in a tax-free exchange in connection with a corporate reorganization showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed on the exchange, or any liabilities to which any of the properties received were subject), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

PART IV. Insolvency reorganizations. The following rules are to be applied in connection with the provisions of Part IV, sections 371 through 373. For rules relating to the effective date of this part and to the application of the rules of this part to years subject to the Internal Revenue Code of 1939, see Part VI.

INSOLVENCY REORGANIZATIONS

§ 1371. Statutory provisions; insolvency reorganizations; reorganization in certain receivership and bankruptcy proceedings.

Sec. 371. Reorganization in certain receivership and bankruptcy proceedings—(a) Exchanges by corporations—(1) In general. No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205)) is transferred in pursuance of an order of the court having jurisdiction of such corporation—

(A) In a receivership, foreclosure, or similar proceeding, or

(B) In a proceeding under chapter X of the Bankruptcy Act (52 Stat. 883-905; 11 U. S. C., chapter 10) or the corresponding provisions of prior law,

to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(2) **Gain from exchanges not solely in kind.** If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in

exchange consists not only of stock or securities permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then—

(A) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(b) **Exchanges by security holders—(1) In general.** No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in subsection (a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(2) **Gain from exchanges not solely in kind.** If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of property permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) **Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (a) (1) or (b) (1) if it were not for the fact that the property received in exchange consists not only of property permitted by subsection (a) (1) or (b) (1) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) **Assumption of liabilities.** In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in section 357 shall apply.

§ 1371-1 Exchanges by corporations—(a) Exchange solely for stock or securities. (1) Section 371 (a) (1) provides for the nonrecognition of gain or loss by a corporation upon certain exchanges made in connection with the reorganization of an insolvent corporation. The section does not apply to a railroad corporation as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205). In order to qualify as a section 371 (a) reorganization, the transaction must satisfy the express statutory requirements as well as the underlying assumptions and purposes for which the exchange is excepted from the general rule requiring the recognition of gain or loss upon the exchange of property.

(2) Section 371 (a) (1) applies only with respect to a reorganization effected in one of two specified types of court proceedings: (i) Receivership, foreclosure, or similar proceedings, or (ii) corporate reorganization proceedings under Chapter X of the Bankruptcy Act (52 Stat. 883-905; 11 U. S. C. c. 10). The specific statutory requirements are the transfer of property of a corporation, in pursuance of an order of the court having jurisdiction of the corporation in such proceeding, to another corporation organized or made use of to effectuate a plan of reorganization approved by the

court in such proceeding, in exchange solely for stock or securities in such other corporation. If the consideration for the transfer consists of other property or money as well as stock and securities, see sections 371 (a) (2) and 371 (c). As to the assumption of liabilities in an exchange described in section 371 (a), see section 371 (d).

(3) The application of section 371 (a) (1) is to be strictly limited to a transaction of the character set forth in such section. Hence, the section is inapplicable unless there is a bona fide plan of reorganization approved by the court having jurisdiction of the proceeding and the transfer of the property of the insolvent corporation is made pursuant to such plan. It is unnecessary that the transfer be a direct transfer from the insolvent corporation; it is sufficient if the transfer is an integral step in the consummation of the reorganization plan approved by the court. By its terms, the section has no application to a reorganization consummated by adjustment of the capital or debt structure of the insolvent corporation without the transfer of its assets to another corporation.

(4) As used in section 371 (a) (1), the term "reorganization" is not controlled by the definition of "reorganization" contained in section 368. However, certain basic requirements, implicit in the statute, which are essential to a reorganization under section 368, are likewise essential to qualify a transaction as a reorganization under section 371 (a) (1). Among these requirements are a continuity of the business enterprise under the modified corporate form and a continuity of interest therein on the part of those persons who were the owners of the enterprise prior to the reorganization. Thus, the nonrecognition accorded by section 371 (a) (1) applies only to a genuine reorganization as distinguished from a liquidation and sale of property to either new or old interests supplying new capital and discharging the obligations of the old corporation. For the purpose of determining whether the requisite continuity of interest exists, the interest of creditors who have, by appropriate legal steps, obtained effective command of the property of an insolvent corporation is considered as the equivalent of a proprietary interest. But the mere possibility of a proprietary interest is not its equivalent. In general, any transaction will be subject to nonrecognition of gain or loss as prescribed by section 371 (a) (1) where the property is transferred to a corporation and the stock and securities of such corporation are transferred to persons who were shareholders or creditors of the transferor corporation as if such stock or securities had been transferred to such persons as shareholders pursuant to the nonrecognition provisions of Part III of this subchapter. The determinative and controlling factors are the corporation's insolvency and the effective command by the creditors over its property. The term "insolvent" as used herein refers to insolvency at any time during the course of the proceeding referred to in section 371 (a) (1), either in the sense of ex-

cess of liabilities over assets or in the sense of inability to meet obligations as they mature.

(5) A short-term purchase money note is not a security within the meaning of this section, and the transfer of the properties of the insolvent corporation for cash and deferred payment obligations of the transferee evidenced by short-term notes is a sale and not an exchange.

(b) *Exchange for stock or securities and other property or money.* If an exchange would be within the provisions of section 371 (a) (1) if it were not for the fact that the consideration for the transfer of the property of the insolvent corporation consists not only of stock or securities but also of other property or money, then, as provided in section 371 (a) (2), if the other property or money received by the corporation is distributed by it pursuant to the plan of reorganization, no gain to the corporation will be recognized. Property is distributed within the meaning of this section if it is paid over or distributed to shareholders or creditors who have by appropriate legal steps obtained effective command of the property of the corporation. If the other property or money received by the corporation is not distributed by it pursuant to the plan of reorganization, the gain, if any, to the corporation from the exchange will be recognized in an amount not in excess of the sum of money and the fair market value of the other property so received which is not distributed. In either case no loss from the exchange will be recognized (see section 371 (c)).

(c) *Records to be kept and information to be filed.* (1) Each corporation a party to a section 371 (a) reorganization shall furnish a complete statement of all facts pertinent to the nonrecognition of gain or loss in connection with the exchange, including:

(i) A certified copy of the plan of reorganization approved by the court in the proceeding, together with a statement showing in full the purposes thereof and in detail all transactions incident, or pursuant, to the plan;

(ii) A complete statement of the cost or other basis of all property, including all stock or securities, transferred incident to the plan;

(iii) A statement of the amount of stock or securities and other property or money received in the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities or other property shall be stated on the basis of the fair market value thereof at the date of the exchange;

(iv) A statement of the amount and nature of any liabilities assumed upon the exchange.

The information required by this section shall be filed as a part of the corporation's return for its taxable year within which the reorganization occurred.

(2) Permanent records in substantial form must be kept by every taxpayer who participates in a tax-free exchange in connection with a corporate reorganization showing the cost or other basis of the transferred property and the amount of stock or securities and other property

or money received (including any liabilities assumed upon the exchange), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

§ 1.371-2 *Exchanges by security holders*—(a) *In general.* (1) Section 371 (b) prescribes the rules relative to the recognition of gain or loss upon certain exchanges made by the holders of stock or securities of an insolvent corporation in connection with a reorganization described in section 371 (a). Under section 371 (b) (1), no gain or loss shall be recognized if, pursuant to the plan of reorganization, stock or securities in the insolvent corporation are exchanged solely for stock or securities in the corporation organized or made use of to effectuate such plan. If, in addition to such stock or securities, other property or money is received upon such exchange, gain is recognized to the extent of such other property or money (section 371 (b) (2)), but no loss is recognized (section 371 (c)). As to the basis of the stock or securities or other property acquired upon an exchange under section 371 (b), see section 358.

(2) By thus characterizing as an exchange, and regarding as a single taxable event, the event or series of events resulting in the relinquishment or extinguishment of the stock or securities in the old corporation and the acquisition in consideration thereof, in whole or in part, of stock or securities in the new corporation, the Internal Revenue Code secures uniformity of treatment for the participating security holders, regardless of the particular steps or the procedural devices by which such exchange is effected. Thus, the transaction which qualified as a reorganization under section 371 (a) may take one of several forms. In a typical creditors' reorganization there may be a transfer of the property of the old corporation to its bondholders, or the bondholders' committee, upon surrender of the bonds, followed by the transfer of such property to the new corporation in consideration of stock in the latter; or there may be a transfer of the bonds to the new corporation in exchange for its stock or securities, followed by the transfer of the property of the old corporation in consideration of the surrender of its bonds. In either event, section 371 (b) treats the result to the participating security holders as an exchange of the securities of the old corporation for securities of the new corporation. In order, however, to qualify as an exchange under section 371 (b) the various events resulting in the relinquishment or extinguishment of the old securities and the acquisition of the new securities must be embraced within the plan of reorganization and must be undertaken for reasons germane to the plan. If the event, or series of events, qualifies as an exchange under section 371 (b), no antecedent event necessarily a component of the relinquishment or extinguishment of the securities of the old corporation in consideration of the acquisition of the securities of the new corporation shall be considered a trans-

action or event having consequences for income tax purposes.

(b) *Exchange solely for stock or securities.* Section 371 (b) (1) provides that no gain or loss shall be recognized upon an exchange consisting of the relinquishment or extinguishment of stock or securities in an insolvent corporation described in section 371 (a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate the plan of reorganization. As used in this section, the term security does not include a short-term note.

(c) *Exchanges for stock or securities and other property or money.* If an exchange would be within section 371 (b) (1) if it were not for the fact that the property received in the exchange consists not only of stock or securities in the corporation organized or made use of to effectuate the plan of reorganization, but also of other property or money, then

(1) As provided in section 371 (b) (2), the gain, if any, to the taxpayer will be recognized in an amount not in excess of the sum of money and the fair market value of the other property. The gain so recognized shall be treated as capital gain.

(2) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent (see section 371 (c)).

(d) *Records to be kept and information to be filed.* (1) Every taxpayer who receives stock or securities and other property or money upon an exchange described in section 371 (b) in connection with a corporate reorganization, must furnish a complete statement of all facts pertinent to the recognition or nonrecognition of gain or loss upon such exchange, including—

(i) A statement of the cost or other basis of the stock or securities transferred in the exchange, and

(ii) A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liability assumed upon the exchange. The amount of each kind of stock or securities and other property (other than liabilities assumed upon the exchange) received shall be set forth upon the basis of the fair market value thereof at the date of the exchange. The statement shall be incorporated in the taxpayer's income tax return for the taxable year in which the exchange occurs.

(2) Permanent records in substantial form shall be kept by every taxpayer who participates in an exchange described in section 371 (b), showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed upon the exchange), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

§ 1.372 *Statutory provisions; insolvency reorganization; basis in connection with certain receivership and bankruptcy proceedings.*

Sec. 372. *Basis in connection with certain receivership and bankruptcy proceedings—*

(a) *Corporation.* If property was acquired by a corporation in a transfer to which—

- (1) Section 371 (a) applies,
- (2) So much of section 371 (c) as relates to section 371 (a) (1) applies, or
- (3) The corresponding provisions of prior law apply,

then notwithstanding the provisions of section 270 of the Bankruptcy Act (54 Stat. 709; 11 U. S. C. 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted under section 1017 by reason of a discharge of indebtedness in pursuance of the plan of reorganization under which such transfer was made.

(b) *Stock or security holder.* For basis of stock or securities acquired under section 371 (b), see section 358.

§ 1.372-1 *Corporations.* (a) If, as the result of a transaction described in section 371, so much of section 371 (c) as relates to section 371 (a), or the corresponding provisions of prior law, the property of an insolvent corporation is transferred, in pursuance of a plan of reorganization, to a corporation organized or made use of to effectuate such plan, the basis of such property in the hands of the acquiring corporation is the same as it would be in the hands of the insolvent corporation, increased in the amount of gain recognized upon such transfer under the law applicable to the year in which the transfer was made. In any such case, the adjustments to basis provided by section 270 of the Bankruptcy Act (54 Stat. 709; 11 U. S. C. 670), or section 1017 of the Internal Revenue Code of 1954, shall not be made in respect of any indebtedness cancelled pursuant to the plan of reorganization under which the transfer was made. If the transaction falls within the provisions of section 372 (a), the basis of the property involved shall be determined pursuant to such provisions, notwithstanding that the transaction might otherwise fall within another basis provision.

(b) The provisions of section 372 (a) are applicable in the determination of basis for all taxable years beginning after December 31, 1933, except that the basis so determined shall not be given effect in the determination of the tax liability for any taxable year beginning prior to January 1, 1943. With the exception indicated, the basis so prescribed is applicable from the date of acquisition of such property. For example, the provisions of section 1016 relating to adjusted basis shall be applied as if section 372 (a) were a part of the Internal Revenue Code of 1939 and prior internal revenue laws applicable to all taxable years beginning after December 31, 1933. Hence, in determining the amount of the adjustments for depreciation, depletion, etc., under the provisions of section 1016 (a) (2), the "amount allowable" is the amount computed with reference to the basis provided in section 372 (a).

(c) The effect of the application of section 372 (a) may be illustrated by the following examples:

Example (1). On January 1, 1935, the Y Corporation, a taxpayer making its returns on the calendar year basis, acquired depreci-

able property from the X Corporation as the result of a transaction described in section 372 (a). On January 1, 1935, the property had, in the hands of the X Corporation, a basis of \$200,000, an adjusted basis of \$150,000, a fair market value as of January 1, 1935, of \$80,000, and an estimated remaining life of 20 years. The 1935 transaction was treated as a taxable exchange and, accordingly, the Y Corporation claimed and was

allowed depreciation in the amount of \$4,000 for each of the eight taxable years 1935 through 1942, inclusive. For each of the twelve taxable years 1943 through 1954, inclusive, the Y Corporation claimed and was allowed depreciation in the amount of \$7,500. On December 31, 1954, the property was sold for \$10,000 cash. The amount of the gain realized upon the sale is computed as follows:

Basis to X Corporation.....	\$200,000
Adjustment for depreciation in the hands of X Corporation (sec. 1016).....	50,000
Adjusted basis for depreciation in the hands of both X and Y Corporations (sec. 372 (b)).....	150,000
Deduct:	
Depreciation allowable in amount of \$7,500 per year ($\frac{1}{20}$ of \$150,000) for 8 years, from Jan. 1, 1935, through Dec. 31, 1942.....	\$60,000
Depreciation allowable Jan. 1, 1943, to Dec. 31, 1954 (12 years at \$7,500).....	90,000
	150,000
Adjusted basis for computing gain or loss.....	0
Sale price.....	10,000
Gain realized.....	10,000

For the taxable year 1943 and succeeding taxable years, the Y Corporation is entitled to deductions for depreciation in respect of such property in the amounts of \$7,500 in the determination of its tax liabilities for such years. But no change in the tax liability is authorized for preceding taxable years by reason of the difference between the \$7,500 depreciation allowable and the \$4,000 deduction previously allowed.

Example (2). Assume the same facts as in example (1), except that the property acquired by the Y Corporation had a fair market value as of January 1, 1935, of \$180,000, instead of \$80,000, and the Y Corporation claimed and was allowed depreciation in the amount of \$9,000 for each of the eight taxable years 1935 to 1942, inclusive, and in the amount of \$6,500 for the taxable years 1943 to 1954, inclusive. In such case, the amount of the gain realized upon the sale of the property would be computed as follows:

Adjusted basis for depreciation in the hands of Y Corporation as computed in example (1).....	\$150,000
Deduct:	
Depreciation allowed in the amount of \$9,000 per year for 8 years Jan. 1, 1935 to Dec. 31, 1942.....	\$72,000
Depreciation allowable Jan. 1, 1943, to Dec. 31, 1954, inclusive (12 times \$6,500).....	78,000
	150,000
Adjusted basis for computing gain or loss.....	0
Sale price.....	10,000
Gain realized.....	10,000

No change in the tax liability is authorized for taxable years preceding 1943 by reason of the difference between the \$7,500 depreciation allowable and the \$9,000 deduction previously allowed.

§ 1.373 *Statutory provisions; insolvency reorganizations; loss not recognized in certain railroad reorganizations.*

Sec. 373. *Loss not recognized in certain railroad reorganizations.*—(a) *Nonrecognition of loss.* No loss shall be recognized if property of a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205), is transferred in pursuance of an order of the court having jurisdiction of such corporation—

- (1) In a receivership proceeding, or
- (2) In a proceeding under section 77 of the Bankruptcy Act,

to a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding.

(b) *Basis.* (1) *Railroad corporations.* If the property of a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) was acquired after December 31, 1933, in pursuance of an order of the court having jurisdiction of such corporation—

- (A) In a receivership proceeding, or
- (B) In a proceeding under section 77 of the Bankruptcy Act, and the acquiring corporation is a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a

plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired.

(2) *Property acquired by street, suburban, or interurban electric railway corporation.* If the property of any street, suburban, or interurban electric railway corporation engaged as a common carrier in the transportation of persons or property in interstate commerce was acquired after December 31, 1934, in pursuance of an order of the court having jurisdiction of such corporation in a proceeding under section 77B of the Bankruptcy Act (48 Stat. 912), and the acquiring corporation is a street, suburban, or interurban electric railway engaged as a common carrier in the transportation of persons or property in interstate commerce, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, then, notwithstanding the provisions of section 270 of the Bankruptcy Act (52 Stat. 904; 11 U. S. C. 670), the basis shall be the same as it would be in the hands of the corporation whose property was so acquired.

§ 1.373-1 *Nonrecognition of loss upon transfer of property of railroad corporation.* (a) For the purpose of section 373 (a), it is unnecessary that the transfer be a direct transfer by the corporation undergoing reorganization or that such reorganization constitute a reorganization within the meaning of sec-

tion 368 (a) since that section does not apply to Part IV of this subchapter. It is sufficient if the transfer is made in the pursuance of an order of the court and is an integral step in the consummation of a plan of reorganization approved by the court having jurisdiction of the proceeding. If these conditions are satisfied, no loss is recognized to the transferor upon the ultimate transfer of the property, or to the transferor upon any intermediate transfer.

(b) Section 373 (a) applies only to a transfer resulting in a loss and has no application if the transfer therein described results in a gain.

(c) See section 354 (c) relative to exchanges by stock or security holders.

§ 1.373-2 Property acquired by railroad corporation in a receivership or railroad reorganization proceeding. (a) Section 373 (b) (1) sets forth certain conditions under which the basis of property acquired by a railroad corporation is the same as it would have been in the hands of the railroad corporation whose property was acquired. For the purpose of section 373 (b) (1), it is unnecessary that the acquisition in question be a direct transfer from the corporation undergoing reorganization or that such reorganization constitute a reorganization within the meaning of section 368 (a) since that section does not apply to Part IV of this subchapter. It is sufficient if the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganization plan approved by the court having jurisdiction of the proceeding.

(b) If the conditions of section 373 (b) (1) are satisfied, then for the purpose of determining basis, the provisions of section 373 (b) (1) only shall apply, notwithstanding that the transaction might also fall within another basis provision.

§ 1.373-3 Property acquired by electric railway corporation in corporate reorganization proceeding. Subject to the limitations and conditions set forth in section 373 (b) (2), if the reorganization under section 77B of the Bankruptcy Act, 48 Stat. 912, of an electric railway corporation results in the acquisition of the property of such corporation by another corporate entity, the basis of such property in the hands of the acquiring corporation is the same as it would be in the hands of the old corporation. It is requisite to the application of the section that both corporations be street, suburban, or interurban electric railway corporations engaged in the transportation of persons or property in interstate commerce, and that the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganization plan approved by the court having jurisdiction of the proceeding. If section 373 (b) (2) applies, section 270 of the Bankruptcy Act (11 U. S. C. 670), relating to the adjustment of basis by reason of the cancellation or reduction of indebtedness in a corporate reorganization proceeding, is inapplicable. Moreover, if the transaction is within the provisions of section 373 (b) (2) and may also be considered to be within any other basis

provision, then the provisions of section 373 (b) (2) only shall apply.

PART VI. Effective date of subchapter C. The following rules are to be applied in connection with the provisions of Part VI, sections 391 through 395.

EFFECTIVE DATE OF SUBCHAPTER C

§ 1.391 Statutory provisions; effective date of Part I.

Sec. 391. Effective date of Part I. Except as otherwise provided in this subchapter, part I shall take effect on June 22, 1954. Section 306 shall apply only with respect to dispositions (or redemptions) occurring on or after June 22, 1954.

§ 1.391-1 Effective date of Part I. Pursuant to section 395 and regulations thereunder, the provisions of Part I of this subchapter shall be effective with respect to the described transactions which occur on or after June 22, 1954, and with respect to section 306 (relating to the disposition or redemption of "section 306 stock"), such section shall apply only to stock which is received in a transaction subject to the Internal Revenue Code of 1954, and which is disposed of or redeemed after June 22, 1954. Generally, stock issued after June 22, 1954, will be section 306 stock if such stock comes within the definition set forth in section 306 (c). However, stock which otherwise qualifies within the definition set forth in section 306 is not section 306 stock if it is issued pursuant to a reorganization which by reason of the application of section 393 (b) and section 395 is governed by the provisions of the Internal Revenue Code of 1939 without amendment by the Internal Revenue Code of 1954. In addition, stock which otherwise qualifies within the definition set forth in section 306 (c) is not section 306 stock if it is issued pursuant to a reorganization which by reason of an election under section 393 (b) (2) is governed by the provisions of the Internal Revenue Code of 1939 without amendment by the Internal Revenue Code of 1954.

§ 1.392 Statutory provisions; effective date of Part II.

Sec. 392. Effective date of Part II—(a) General rule. Except as otherwise provided in this subchapter, part II shall apply with respect to a plan of liquidation only if the first distribution in pursuance of such plan occurs on or after June 22, 1954. Section 341 shall apply only with respect to sales, exchanges, and distributions on or after June 22, 1954.

(b) Special rule for certain sales during 1954—(1) *Nonrecognition of gain or loss.*

(A) All of the assets of a corporation (less assets retained to meet claims) are distributed before January 1, 1955, in complete liquidation of such corporation; and

(B) The corporation elects (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this subsection apply.

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property during the calendar year 1954.

(2) *Certain provisions of section 337 made applicable.* For purposes of paragraph (1)—

(A) The term "property" has the meaning given to such term by section 337 (b); except that any determination required by section 337 (b) to be made by reference to the date of the adoption of the plan of liquidation

shall be made by reference to January 1, 1954; and

(B) The limitations of section 337 (c) shall apply.

For purposes of section 453 (d) (4) (B) (relating to disposition of installment obligations), nonrecognition of gain or loss under paragraph (1) of this subsection shall be treated as nonrecognition of gain or loss under section 337.

(3) *Plans of liquidation adopted after December 31, 1953 and before June 22, 1954.* If the plan of complete liquidation was adopted after December 31, 1953, and before June 22, 1954, then, at the election of the corporation (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe)—

(A) The 12-month period beginning on the date of the adoption of such plan shall be (i) the period for distribution (in lieu of the requirement in paragraph (1) (A) of this subsection that the assets be distributed before January 1, 1955), and (ii) the period during which, by reason of paragraph (1) of this subsection, gain or loss to the corporation is not recognized (in lieu of nonrecognition of gain or loss during the calendar year 1954); and

(B) Notwithstanding paragraph (2) (A) of this subsection, any determination required by section 337 (b) to be made by reference to the date of the adoption of the plan of liquidation shall be made by reference to such date (and not by reference to January 1, 1954).

§ 1.392-1 (a) General. Section 392 provides the general rule that Part II of Subchapter C, relating to liquidations shall be applicable only if the first distribution in pursuance of any plan of liquidation occurs on or after June 22, 1954. For this purpose, the date of adoption of the plan of liquidation is not material, except as provided in such part.

(b) *Certain sales in 1954.* Section 392 (b) provides special rules with respect to nonrecognition of gain or loss upon certain sales or exchanges of property in connection with liquidations completed during the calendar year 1954 and in connection with plans of liquidation adopted after December 31, 1953 and before June 22, 1954.

(c) *Election.* Any election provided in section 392 (b) shall be made by attaching to the return of the liquidating corporation for the year in which falls the date of the final liquidating distribution, a statement indicating its election with respect to section 392 (b). If such a statement is not attached to the return for such year, the provisions of section 392 (b) shall not be applicable.

§ 1.393 Statutory provisions; effective dates of Parts III and IV.

Sec. 393. Effective dates of Parts III and IV—(a) General rule. Except as otherwise provided in this subchapter, parts III and IV shall take effect on June 22, 1954.

(b) *Special rules for plans of reorganization—(1) In general.* Except as provided in paragraphs (2) and (3), parts III and IV shall apply only in respect of plans of reorganization adopted on or after June 22, 1954. For purposes of this paragraph and paragraphs (2) and (3), a plan to make a transfer to a controlled corporation described in section 351, or a plan to make an exchange or distribution which is described in section 355 (or so much of section 356 as relates to section 355) shall be treated as a plan of reorganization.

(2) *Election to have 1939 Code apply.* If—
(A) A plan of reorganization was submitted to the Secretary or his delegate be-

fore June 22, 1954, but such plan was not adopted before such date.

(B) The Secretary or his delegate issues (whether before, on, or after such date) a ruling with respect to such plan, and

(C) The corporations which are parties to the reorganization elect (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this paragraph apply.

then, if such reorganization is completed in accordance with the plan so submitted, the tax treatment of such reorganization (as to the corporations which are parties to the reorganization and as to their shareholders and security holders) shall be determined under the Internal Revenue Code of 1939 (in accordance with the contents of such ruling) and not under this Code.

(3) Election to have 1954 Code apply. If—

(A) A plan of reorganization—

(i) Was adopted after March 1, 1954, and before June 22, 1954, or

(ii) Was adopted before June 22, 1954, in pursuance of a court order and all distributions under the plan occur after March 1, 1954, and before July 1, 1954, and

(B) The corporations which are parties to the reorganization elect (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this paragraph apply.

then the tax treatment of such reorganization (as to the corporations which are parties to the reorganization and as to their shareholders and security holders) shall be determined under this Code and not under the Internal Revenue Code of 1939.

§ 1.393-1 *Effective dates of Parts III and IV.* Section 393 provides the general rule that Part III of Subchapter C, relating to corporate reorganizations, and Part IV of Subchapter C, relating to certain insolvency reorganizations shall take effect on June 22, 1954.

§ 1.393-2 *Special rule with respect to certain plans of reorganization arising in 1954.* (a) For the purpose of section 393 (b) (1)—

(1) If a corporation has adopted a plan of reorganization as there described before June 22, 1954, it may, if no action has been taken with respect to such plan which would constitute a realization of income or loss (whether or not recognized), and if no conveyance, exchange or distribution has been made by the corporation, rescind by proper corporate action and adopt such plan or another plan of reorganization after June 22, 1954, if all other corporations, parties to such reorganization, likewise rescind and readopt after such date.

(2) A corporation shall be considered to have adopted a plan of reorganization on the date on which a resolution of the board of directors is passed, adopting such plan or recommending its adoption to the shareholders, or upon the date of adoption of the plan of reorganization by the shareholders of such corporation, whichever is earlier.

(b) For the purpose of section 393 (b) (2)—

(1) A plan of reorganization shall be deemed to have been submitted before June 22, 1954, if such plan was filed before such date, with any office of the Internal Revenue Service with a request for a ruling as to the tax treatment thereof.

(2) A ruling with respect to such plan shall be a ruling letter signed by an official authorized to issue rulings in the office of the Assistant Commissioner

(Technical) in the National Office of the Internal Revenue Service.

(3) Any such ruling issued shall be conclusive as to the law applicable to the transaction under the Internal Revenue Code of 1939 and for this purpose such Code shall be deemed not to be amended by the provisions of Parts III and IV.

(4) A plan of reorganization shall be deemed to have been filed on the date it is placed in the mail as shown by the postmark on the envelope containing such request for ruling or as shown by other available evidence of the mailing date, if the envelope is properly addressed and the proper postage affixed.

§ 1.393-3 *Making and filing of elections.* The elections provided for in subsection (b) (2) and (b) (3) of section 393 shall be executed in the same manner as is required in the case of the income tax returns of the taxpayers. Where more than one corporation is involved in the transaction, all such corporations shall join in making the election, except that a corporation which was not in existence on June 22, 1954, shall not be required to make an election (unless it is the only corporation involved in the transaction). It will be sufficient if the corporations in existence on June 22, 1954, make the election for themselves and for the corporation to be organized after that date pursuant to the plan of reorganization, but such election shall be binding on the new corporation when it is formed and on the holders of its stock and securities. The elections are to be filed with the district director of internal revenue in the district in which the returns of the corporations are filed. The filing is to be accomplished by attaching the election (or a certified copy thereof if more than one corporation is involved) to the tax return for the year in which the transaction took place. Furthermore, a copy of such election is to be attached to the income tax returns of each shareholder or security holder who made exchanges, or received distributions, pursuant to the plan, for the year in which the transaction took place. The elections filed with the corporation returns must be accompanied by all relevant data pertaining to the transaction and by certified copies of the resolution of the directors authorizing the election. An election once made and filed by the corporations that are parties to the reorganization shall be irrevocable both as to the corporations involved and as to the holders of their stock and securities. Permanent records of all relevant data shall be kept by every taxpayer for whom an election was filed under section 393 (b), in order to facilitate the determination of gain or loss from a subsequent disposition of stock or securities or other property acquired in the transaction in respect of which the election was filed.

§ 1.395 *Statutory provisions; special rules for application of subchapter C.*

Sec. 395. *Special rules for application of this subchapter—*(a) *Taxable years affected.* Any provision of this subchapter the applicability of which is stated in terms of a specific date shall apply with respect to taxable years ending after such date. Each provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed

to be included in the Internal Revenue Code of 1939, but shall apply only to taxable years ending after such specific date.

(b) *Repeal and continuance of Internal Revenue Code of 1939.* To the extent that the provisions of this subchapter supersede the provisions of the Internal Revenue Code of 1939, such provisions of the Internal Revenue Code of 1939 are hereby repealed. The provisions of the Internal Revenue Code of 1939 shall continue to apply with respect to transactions for which rules are provided in this subchapter until such rules take effect.

§ 1.395-1 *Special rules for application of subchapter C.* (a) In general, under section 7851, the provisions of this subchapter are applicable to any taxable year beginning after December 31, 1953, which ends after August 16, 1954, the date of the enactment of the Internal Revenue Code of 1954. The applicable date of each provision with respect to such year is stated either in connection therewith or in sections 391 through 394. The years to which this subchapter is applicable will include the calendar year 1954, and all fiscal years beginning in 1954 and ending after August 16, 1954. All years beginning before January 1, 1954, and ending either before, on or after August 16, 1954, are subject to the Internal Revenue Code of 1939. All taxable years beginning after December 31, 1953, and ending before August 16, 1954, are also subject to the Internal Revenue Code of 1939.

(b) If there is included in the return for a taxable year subject to the Internal Revenue Code of 1939 items to which the provisions of this subchapter would be applicable if such years were subject to the Internal Revenue Code of 1954, such items shall be reported pursuant to the requirements of this subchapter if the transactions giving rise to such items occurred after the applicable dates specified. The determination in this case of the proper tax treatment shall be made by substituting the applicable provisions of subchapter C for the provisions of the Internal Revenue Code of 1939 which would otherwise be applicable thereto. For example, if a complete liquidation of a corporation occurs and if such liquidation would have been subject to the provisions of section 332 had the Internal Revenue Code of 1954 been applicable then section 332 of this Code shall be deemed to have superseded section 112 (b) (6) of the Internal Revenue Code of 1939. If such transaction occurred prior to the applicable date, then the provisions of the Internal Revenue Code of 1939 alone are applicable. If there is included in the return for a taxable year subject to the Internal Revenue Code of 1954 items to which the provisions of this subchapter would be applicable, except for the applicable dates specified, such items shall be reported pursuant to the requirements of the Internal Revenue Code of 1939 applicable to such transactions. For example, the tax treatment of a complete liquidation of a corporation described in section 332 will be determined not by section 332 but pursuant to the rules of section 112 (b) (6) of the Internal Revenue Code of 1939. If such liquidation occurred after June 21, 1954, only section 332 shall be applicable.

[F. R. Doc. 54-9837; Filed, Dec. 10, 1954; 8:55 a. m.]

[26 CFR (1954) Part 221]

PRODUCTION OF BRANDY

NOTICE OF PROPOSED RULE-MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D. C., within the period of 15 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

PART 221—PRODUCTION OF BRANDY

Preamble. 1. The regulations in this part shall, as to facts and circumstances arising on and after January 1, 1955, supersede Regulations 5, 1950 edition (26 CFR (1939) Part 184; 15 F. R. 5552) as amended by Treasury Decisions 5806 (15 F. R. 6045), 5824 (16 F. R. 121), 5919 (17 F. R. 6639), 6005 (18 F. R. 2139), 6049 (18 F. R. 7173), 6067 (19 F. R. 1901), 6068 (19 F. R. 1928), 6075 (19 F. R. 4025), and 6097 (19 F. R. 5577).

2. These regulations shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced, before the effective date of these regulations.

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AUTHORITY: §§ 221.1 to 221.837 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Statutory provisions interpreted or applied are cited to text in parentheses.

SUBPART A—SCOPE OF REGULATIONS

§ 221.1 *Production and removal of brandy.* Regulations in this part relate to the production of brandy and the removal thereof from the distillery under the exemptions from law provided in this part pursuant to section 5215, I. R. C. The regulations cover the location, construction, equipment, action by the assistant regional commissioner and Director, Alcohol and Tobacco Tax Division; control and supervision of the distillery, production and removal of brandy; and concern the sale, shipment, losses, records and reports, of brandy.

§ 221.2 *Forms prescribed.* The Director, Alcohol and Tobacco Tax Division, is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns, and records. Information called for shall be furnished in accordance with the instructions on the forms or issued in respect thereto.

SUBPART B—DEFINITIONS

§ 221.5 *Meaning of terms.* As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

§ 221.6 *Approved containers.* "Approved containers" shall mean casks, barrels or similar wooden packages, or drums or similar metal packages, having a capacity of not less than ten gallons each and unless specifically excluded, shall also mean tank cars, tank trucks, and pipelines between plants on the same, contiguous, or adjacent premises. The Director, Alcohol and Tobacco Tax Division, may authorize the use of such other containers as he may deem suitable. For the withdrawal of samples for laboratory analysis "approved containers" shall mean any container of less than ten gallon capacity.

§ 221.7 *Assistant regional commissioner.* "Assistant regional commissioner" shall mean the assistant regional commissioner, Alcohol and Tobacco Tax, who is responsible to, and functions under the direction and supervision of, the Regional Commissioner of Internal Revenue.

§ 221.8 *Brandy or brandies.* "Brandy" or "brandies" shall mean distilled spirits produced in accordance with this part, with or without the use of water to facilitate extraction or distillation, exclusively from fresh or dried fruit, or their residues, or the wine or wine residues therefrom, or, where sugar has been used in the production of natural wines, the wines or wine residues therefrom, if unfermented sugars are not re-fermented and shall include wine spirits, spirits—fruit, and neutral spirits—fruit, except where otherwise indicated but shall not include distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil.

§ 221.9 *Director, Alcohol and Tobacco Tax Division.* "Director, Alcohol and Tobacco Tax Division", shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington, D. C.

§ 221.10 *Distiller.* "Distiller" shall mean the proprietor of a distillery.

§ 221.11 *Distillery.* "Distillery" shall mean that part of the distillery premises described in the distiller's notice, Form 27½, where the distilled spirits are produced.

§ 221.12 *Distillery premises.* "Distillery premises" shall mean the lot or tract of land described in the distiller's notice, Form 27½, and the distillery and other buildings and fixtures situated on and constituting a part of such lot or tract of land.

§ 221.13 *District director.* "District director" shall mean district director of internal revenue.

§ 221.14 *Fruit distillery.* "Fruit distillery" shall mean a distillery established or operated under the provisions of this part.

§ 221.15 *Gallon.* "Gallon" or "wine gallon" shall mean a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

§ 221.16 *Heads and tails.* "Heads and tails" shall mean distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil.

§ 221.17 *Including.* The word "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.

§ 221.18 *Inclusive language.* Words in the plural form shall include the singular, and vice versa, and words in the masculine gender shall include females, associations, copartnerships, and corporations.

§ 221.19 *I. R. C.* "I. R. C." shall mean the Internal Revenue Code of 1954.

§ 221.20 *Laboratory analysis.* "Laboratory analysis" shall mean the deter-

mination of the composition of brandy by chemical, physical, or organoleptic examination.

§ 221.21 *Person, proprietor, or distiller.* "Person," "proprietor," or "distiller" shall include natural persons, associations, partnerships, and corporations.

§ 221.22 *Prior lessee.* "Prior lessee" shall mean a lessee whose lease has not terminated.

§ 221.23 *Proof.* "Proof" shall mean the ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

§ 221.24 *Proof of distillation.* "Proof of distillation" shall mean the composite proof of the brandy in the receiving tanks prior to reduction, or, if the brandy is reduced before reaching the receiving tanks, the proof prior to such reduction, unless the brandy is subsequently redistilled at a higher proof than the proof prior to reduction.

§ 221.25 *Proof gallon.* "Proof gallon" shall mean the alcoholic equivalent of a United States gallon at 60 degrees Fahrenheit, containing 50 percent of ethyl alcohol by volume.

§ 221.26 *Proof spirits.* "Proof spirits" shall mean that alcoholic liquor which contains 50 percent of ethyl alcohol by volume at 60 degrees Fahrenheit and which has a specific gravity of 0.93418 in air at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

§ 221.27 *Registered distillery.* "Registered distillery" shall mean a distillery established and operated under the regulations governing the production of distilled spirits other than alcohol, and brandy produced pursuant to the provisions of this part.

§ 221.28 *Secretary.* "Secretary" shall mean the Secretary of the Treasury.

§ 221.29 *Tank car.* "Tank car" shall mean a railroad tank car conforming to the requirements of this part.

§ 221.30 *Tank truck.* "Tank truck" shall mean a tank truck conforming with the requirements of this part.

§ 221.31 *Tax gallon.* "Tax gallon" is the unit of distilled spirits upon which the rate of tax prescribed by law is imposed. When spirits are 100 degrees of proof or more, the tax rate is imposed on the proof gallon. When spirits are less than 100 degrees of proof, it is imposed on the wine gallon.

§ 221.32 *U. S. C.* "U. S. C." shall mean the United States Code.

§ 221.33 *Wine spirits.* "Wine spirits" shall mean brandy, as defined in § 221.8, distilled at 140 degrees of proof or more and not reduced with water from distillation proof.

SUBPART C—EXEMPTION OF FRUIT DISTILLERS FROM CERTAIN PROVISIONS OF LAW

EXEMPTIONS

§ 221.40 *General.* Section 5215, I. R. C., authorizes the Secretary or his delegate to exempt brandy or wine spirits produced (with or without the addition of water to facilitate extraction

or distillation) exclusively from fresh or dried fruit, or their residues, or the wine or wine residues therefrom, or, where sugar has been used in the production of natural wine, the wine or wine residues therefrom, if the unfermented sugars are not re-fermented, or any person responsible therefor, from any provision of the internal revenue laws relating to the production, storage or withdrawal of spirits applicable to such brandy or wine spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so. Pursuant to this authority, distillers producing brandy from such materials are hereby exempted from the provisions of law to the extent indicated in this subpart.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.41 *Brandy for experimental or research use.* Any university, college of learning, or institution of scientific research may be authorized on filing bond with adequate surety in amount equal to the tax on the quantity received or possessed during any calendar month (but in no case less than \$500) to produce, receive, blend, treat and store brandy, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, in such quantities as may be reasonably necessary for such purposes. Establishment of premises and authorization of operations will be in conformity with the provisions of this part except that the assistant regional commissioner may waive specific requirements upon showing of the inapplicability therefor and where such waiver would not endanger the revenue. Subsequent to original establishment, applications to conduct specific operations will be in letter form or by the use of forms, modified to suit the individual operation as specified by the assistant regional commissioner.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.42 *Section 5179, I. R. C.* Fruit distillers are exempted from all the provisions of section 5179, I. R. C., concerning the requirements relating to survey of distilleries.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.43 *Section 5171, I. R. C.* Fruit distillers are exempted from so much of section 5171, I. R. C., as provides that no person shall use any still, boiler, or other vessel for the purpose of distilling in any yard or inclosure connected with any dwelling house: *Provided*, That where the distillery and dwelling adjoin, the two must be separated by an unbroken partition of substantial construction.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.44 *Section 5173 (b), I. R. C.* Fruit distillers are exempted from all the provisions of section 5173 (b), I. R. C. relative to requirements for receiving cisterns and cistern room: *Provided*, That locked receiving tanks are installed by the distiller and all brandy produced is deposited therein, in accordance with the provisions of this part.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.45 *Section 5193 (a), I. R. C.* Fruit distillers are exempted from so much of section 5193 (a), I. R. C., as provides for the withdrawal of distilled spirits from the receiving cisterns on or before the third working day after such spirits were deposited therein.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.46 *Section 5192 (b), I. R. C.* Fruit distillers are exempted from all the provisions of section 5192 (b), I. R. C., relative to cistern room supervision: *Provided*, That receiving tanks shall be under such supervision of a storekeeper-gauger as may be required by this part.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.47 *Section 5195 (a), I. R. C.* Fruit distillers are exempted from all the provisions of section 5195 (a), I. R. C., where the assistant regional commissioner finds that an emergency exists requiring operation of the distillery between 11:00 p. m. Saturday and 1:00 a. m. Monday for the purpose of preventing the loss, and effecting the salvaging, of crop or other materials.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.48 *Section 5197 (b), I. R. C.* Fruit distillers are exempted from all the provisions of section 5197 (b), I. R. C.: *Provided*, That the distiller renders a true and correct report of the operations and transactions at the distillery on Form 15 to the assistant regional commissioner immediately after the close of the month and the gauging of all brandy produced during the month, but not later than the 10th day of the succeeding month, in accordance with the requirements of the regulations in this part.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.49 *Section 5231, I. R. C.* Fruit distillers are exempted from so much of section 5231, I. R. C., as provides that no door of the internal revenue bonded warehouse shall open into the distillery.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.50 *Sections 5193 and 5194 I. R. C.* Fruit distillers are exempted from the provisions of sections 5193 and 5194 I. R. C., to the extent that brandy of any desired proof may be drawn from receiving tanks and (a) removed from the distillery in approved containers in the manner prescribed in this part, or (b) stored in the brandy deposit room of the distillery temporarily as provided in this part.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.51 *Exemptions subject to change.* The exemptions from the above-mentioned provisions of law shall be subject to such further changes by regulations as may be deemed necessary to insure lawful manufacture and disposition of all brandy produced.

(68A Stat. 640; 26 U. S. C. 5215)

SUBPART D—LOCATION

§ 221.60 *Restrictions.* Fruit distilleries may not be located in a dwelling house, or on board of any vessel or boat, or on any premises where beer, wines, or vinegar are manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are re-

tailed, or where any other business is carried on, except that the assistant regional commissioner may authorize the use of the distillery buildings or premises for miscellaneous storage of unfermentable materials during periods the distillery is under suspension: *Provided*, That saleratus may be manufactured on fruit distillery premises: *Provided further*, That any boiler used in generating steam or heating water to be used in any distillery may be located in any other building or on any other premises to be connected with such still or boiling tubs, by suitable pipes or other apparatus, or the steam from such boiler in the distillery may be conveyed to other premises to be used for manufacturing or other purposes.

(68A Stat. 627; 26 U. S. C. 5171)

SUBPART E—CONSTRUCTION

§ 221.70 *Distillery buildings.* The distillery buildings must be securely constructed of brick, stone, wood, concrete, or other substantial material and, except as otherwise provided in this part, must be completely separated from contiguous buildings not on the distillery premises by unbroken partitions of substantial construction extending from the ground to the roof in a direct vertical line: *Provided*, That where the furnace or boiler used for generating steam or heating water for use in the distillery is located off the distillery premises, or where steam is to be conveyed from a boiler in the distillery to other premises for manufacturing or other purposes, or where distilling material or fuel is to be received by chute or pipeline, or where distilled spirits, distilled water, etc., is to be removed from the distillery by pipeline, in accordance with the law and this part, necessary openings for the passage of the required pipelines or chutes may be permitted in the walls or partitions separating the distillery from the adjoining premises: *And provided further*, That necessary openings for the passage of approved water, electric, sewer, or similar lines may likewise be permitted in such walls or partitions. With the approval of the assistant regional commissioner, doors may be placed in the partition separating the fruit distillery from a contiguous bonded wine cellar, and provision made for the transfer of distilling material between such premises in containers or by fixed pipeline. Where an internal revenue bonded warehouse is operated by the distiller on the distillery premises and adjoins the distilling building or room, a door may be permitted in the wall separating the warehouse and such building or room. The foundations, floors, walls, and roofs, and the doors, windows, and other openings of distillery buildings shall be constructed, and such doors, windows, and other openings shall be protected and secured, as provided in this subpart.

§ 221.71 *Foundations.* The foundations of distillery buildings shall be constructed of stone, brick, concrete, or other equally substantial material, extending into the ground.

§ 221.72 *Floors.* The distillery buildings must have suitable floors con-

structed of wood, concrete, brick, or other equally substantial material. If a receiving room or brandy deposit room is provided, and the floors are constructed of wood, the boards must be fitted together by tongue and groove, or laid double with the second layer crossing the first at an angle of more than 20 degrees, and securely nailed and fastened.

§ 221.73 *Walls.* The outside walls of distillery buildings must be securely and substantially constructed. The ceiling and walls inside of the receiving room and brandy deposit room must be cased with matched tongue and groove boards, unless the use of other material affording equal protection from access without detection is approved by the Director, Alcohol and Tobacco Tax Division.

§ 221.74 *Roofs.* The roofs of distillery buildings must be securely and substantially constructed.

§ 221.75 *Doors.* The outside doors of the distillery buildings must be securely and substantially constructed and equipped, so that they may be securely locked. In addition, the doors of receiving rooms, brandy deposit rooms, and other rooms required to be locked by § 221.812 must comply with the following requirements: The outside doors, and those on which Government locks are required, must be equipped with hasp and staple securely fastened on the inside, so that they may be securely locked. The doors secured from the inside must be provided with a cross bar in the middle of the door, and strong and suitable attachments for the reception of locks. Where there are double doors, one of them, at least, must be provided with substantial bolts at both the top and the bottom. These bolts must be so arranged as to plunge into substantial fastenings or holes in the middle of the upper and lower ends of the frame when the door is closed. Folding doors of wood or metal, vertical or horizontal sliding doors of wood or metal, and metal doors of the roller blind type, must be provided with substantial cross bars, or bolts that plunge into the upper and lower ends, of the sides of the door frame, so placed as to make the door rigid and secure, unless the doors operate in grooves or tracks that make them secure.

WINDOWS IN RECEIVING AND BRANDY DEPOSIT ROOMS

§ 221.76 *General.* The windows in the receiving room and brandy deposit room must be constructed and secured as outlined in §§ 221.77-221.84.

§ 221.77 *Windows within 12 feet of ground, etc.* Windows located within 12 feet of the ground, or within 12 feet (a) above a fire escape (except as provided in § 221.78), (b) above a roof, setback, or balcony within 12 feet of the ground, (c) above a roof or balcony of an adjoining building, or (d) of a roof, window, or other opening of an opposite building, must conform to the following requirements:

(1) *Wood sash.* Windows consisting of plain or wire glass panes set in wood

sash must be protected by iron bars and solid shutters;

(2) *Steel sash.* Windows consisting of wire glass panes set in metal sash must be protected by iron bars;

(3) *Detention type.* Windows may be of the detention type, consisting of solid steel frame, sash, and grille (with sections not larger than 6 by 10 inches), combined in one unit and erected in one piece, equipped with wire glass panes.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.78 *Opening onto fire escape.* Windows opening onto a fire escape shall be protected by solid metal shutters, securely hinged and equipped with facilities for securing on the inside with either a Government lock or a Government cap seal.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.79 *Extension of requirements.* The assistant regional commissioner may require any other windows in the receiving and brandy deposit rooms to be protected by iron bars or shutters, or both, when deemed necessary to safeguard the spirits.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.80 *Windows more than 12 feet from ground.* Windows more than 12 feet from the ground and not subject to the provisions of §§ 221.77-221.78 must be securely constructed and so arranged and equipped that they may be securely fastened on the inside.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.81 *Set in casement.* Windows must be securely set into the window casement in such a manner as to prevent ready removal.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.82 *Sash locks.* Window sashes must be provided with sash locks or other suitable fasteners.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.83 *Shutters.* The shutters must be solid and substantially constructed of metal or wood, and must be fastened inside of the room or building and so secured that they cannot be opened from the outside.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.84 *Iron bars.* The iron bars must be not less than three-fourths of an inch in diameter, placed perpendicularly in the windows or walls, not more than 5 inches apart from center to center, and reinforced by iron cross bars not more than 36 inches apart. All bars and cross bars must be securely fastened to the window frames or embedded in the walls in such a manner as to prevent their removal and to afford proper security.

(68A Stat. 643; 26 U. S. C. 5231)

§ 221.85 *Other windows.* All other windows of distillery buildings must be securely constructed and so arranged and equipped that they may be securely fastened on the inside.

§ 221.86 *Skylights, monitors, penthouses, etc.* Skylights, monitors, penthouses, and similar openings will be re-

garded as windows and treated as such, except that shutters will not be required.

§ 221.87 *Ventilators.* Small openings in outside walls of distillery buildings, and in the ground floors and the roofs thereof, for ventilation or heating purposes, will be permitted, provided they are protected by substantial metal gratings, securely attached to or embedded in the floor, wall, or roof. Where such openings in the walls, floors, and roofs of receiving and brandy deposit rooms are larger than 6 by 6 inches, they shall be further protected by iron bars. The assistant regional commissioner may approve other means of protection in lieu of those specified in this section, where in his opinion, adequate protection to the revenue is afforded thereby. Such openings will not be permitted in walls or floors which separate the distillery from contiguous premises.

§ 221.88 *Drains.* Openings in floors will be permitted for drainage or sewage, provided they are permanently connected to the sewer system and protected in the same manner as ventilators.

§ 221.89 *Receiving room.* The proprietor may provide a receiving room in which to locate the receiving tanks. If such a room is provided, it shall be constructed in accordance with the applicable provisions of §§ 221.70-221.88. No door, window, or other opening leading from the receiving room into any other building or room, except the distilling building or room, will be permitted: *Provided,* That where the receiving room and brandy deposit room adjoin each other there may be a communicating door between them. All doors of the receiving room shall be locked on the inside with Government locks, except the entrance door and the communicating door, if any, between the receiving room and the brandy deposit room. The entrance door shall be locked on the outside of the receiving room with a Government seal lock and the communicating door between the receiving room and the brandy deposit room shall be locked on the brandy deposit room side. The receiving room must be well lighted, and of sufficient size and so equipped as to permit prompt and convenient conduct of operations required therein. A sign must be placed over the entrance door bearing the words "Receiving Room."

§ 221.90 *Brandy deposit room.* Unless all brandy is removed from the distillery in accordance with §§ 221.515-221.520, during the regular working hours of the same day on which it is drawn from the receiving tanks, there must be provided a room (or building) to be known as the brandy deposit room (or building) for the temporary storage of brandy pending removal thereof from the distillery premises. The brandy deposit room shall be constructed in accordance with the applicable provisions of §§ 221.70-221.88. No door, window, or other opening leading from the brandy deposit room into any other building or room, except the distilling building or room, will be permitted: *Provided,* That where the brandy deposit room and the receiving room adjoin each other there may,

as provided in § 221.89, be a communicating door between them. All doors of the brandy deposit room shall be locked on the inside with Government locks, except the entrance door, which shall be locked on the outside of the room with a Government seal lock. The brandy deposit room must be well lighted and of sufficient size and so equipped as to permit of prompt and convenient conduct of operations required therein. A sign must be placed over the entrance of the room bearing the words "Brandy Deposit Room."

§ 221.91 *Filled package storeroom.* Where packages are filled from tanks in the brandy deposit room and it is desired to store such filled packages temporarily pending removal from the distillery, a separate compartment or room must be provided within the brandy deposit room for the storage thereof. The construction of such filled package storeroom must conform to the applicable provisions of §§ 221.70-221.88. All doors of this compartment or room shall be equipped for locking on the inside with Government locks, except the entrance door which shall be equipped for locking on the outside. The entrance door of the filled package storeroom shall open into the other part of the brandy deposit room.

§ 221.92 *Fermenting room or building.* Where distilling material is produced on the distillery premises, a room or building must be provided in which shall be located the fermenting tanks, distilling material storage tanks, and distilling material measuring tanks: *Provided,* That where closed tanks are used they need not be located in a room or building. If a fermenting room is provided, it may be located in the distilling building and have direct communication with other portions of such building. Where all distilling material used is produced on other premises, a fermenting room or building need not be provided. The distilling material measuring tank shall in such case be located in the distillery, but not necessarily in a separate room: *Provided,* That where all distilling material used is received from a bonded wine cellar operated by the distiller on contiguous premises, the distilling material measuring tank may be located on the wine cellar premises. Where the distilling material measuring tank is located on the premises of a contiguous bonded wine cellar, a fixed pipeline must be installed for conveying the distilling material from the measuring tank to the distillery, where it shall be conveyed direct to the chargers of the stills or to sumps for immediate transfer to the chargers. If carbon dioxide gas is recovered, the necessary purifiers, scrubbers, and wash-water receiving tanks should be located in the fermenting room or building or in an adjoining room or building.

§ 221.93 *Empty container storeroom.* If empty packages are to be stored on the distillery premises, a separate room or building must be provided for such purpose. Such room or building shall not have any means of interior communication with any other room or building used in connection with the

production or storage of brandy: *Provided*, That the assistant regional commissioner may authorize a door connecting with the brandy receiving or deposit room when, in his opinion, such opening will not constitute a jeopardy to the revenue. Such door must be equipped on the brandy receiving room or deposit room side with a Government lock. The empty container building may be used for general cooerage purposes.

§ 221.94 *Government office.* The proprietor shall provide and maintain on the distillery premises for the exclusive use of internal revenue officers a securely constructed, well-lighted, heated, and ventilated office of suitable dimensions: *Provided*, That where the proprietor operates an internal revenue bonded warehouse on or contiguous to the distillery premises, or a bonded wine cellar contiguous to such premises, and a Government office conforming to the requirements specified in this section is provided on the warehouse or wine cellar premises, and such office is so located as to be suitable for the use of internal revenue officers assigned to the distillery, a separate Government office need not be provided on the distillery premises. The Government office shall be equipped with toilet and lavatory facilities and with a suitable number of desks, chairs, file cases, and such other furniture as may be necessary for the keeping of Government records and the preparation of reports. Where distilling materials, etc., are tested by internal revenue officers, the Government office shall also be provided with running water, and such tables and shelves as may be required, unless suitable laboratory facilities are available to internal revenue officers elsewhere on the premises. The door of the Government office shall be equipped with a cylinder type lock, and a sufficient number of keys therefor shall be furnished the assistant regional commissioner for the use of internal revenue officers. Where deemed necessary to afford adequate security to Government property, the assistant regional commissioner may require the windows of the Government office to be protected by shutters or iron bars, and the door to be so equipped that it may be securely fastened with a Government lock. A sign must be placed over the entrance door bearing the words, "Government Office". Where brandy is drawn into packages from receiving or brandy storage tanks the distiller must provide beside the scales on which the packages are weighed a desk or table and chair for the use of the storekeeper-gauger in preparing his reports of gauge.

§ 221.95 *Government cabinet.* There shall be provided in the Government office a metal cabinet of adequate strength and size, suitably equipped for locking with a Government seal lock, for use in safeguarding Government locks, keys, seals, and other Government property, and stamps in the custody of internal revenue officers. Each such cabinet shall be subject to approval by the assistant regional commissioner.

SUBPART F—SIGN

§ 221.105 *Posting of sign.* The proprietor shall place and keep conspicuously on the outside and at the front of the distillery where it can be plainly seen, a sign exhibiting in plain, legible and durable letters, not less than 3 inches in height and of a proper and proportionate width, the name of the distiller and the words "Fruit Distillery," followed by the registered number of the distillery.

(68A Stat. 632; 26 U. S. C. 5180)

SUBPART G—EQUIPMENT

§ 221.110 *Scales for packages.* Where brandy or heads and tails are drawn into packages at the distillery, the distiller must provide suitable and accurate scales, graduated in half pounds, on the distillery premises for weighing the same.

(68A Stat. 639; 26 U. S. C. 5212)

§ 221.111 *Weighting tanks.* Where brandy is to be removed from a distillery by pipeline for any authorized purpose as provided by this part, the distiller must provide on the distillery premises one or more suitable weighing tanks constructed in accordance with the provisions of § 221.112 unless the receiving tanks or brandy deposit tanks are mounted on scales, or unless such removals are limited to transfer of brandy to a weighing tank in a warehouse on the same or contiguous premises, or to a weighing tank in a contiguous bonded wine cellar, or to a weighing tank in a contiguous distillery, and gauged therein. The beams or dials of scales must be graduated to enable readings to be made as follows: To the nearest $\frac{1}{2}$ pound for scales having a capacity not to exceed 2,000 pounds; to the nearest 1 pound for scales having a capacity of over 2,000 pounds, but not exceeding 6,000 pounds; to the nearest 2 pounds for scales having a capacity over 6,000 pounds, but not exceeding 20,000 pounds; to the nearest 5 pounds for scales having a capacity over 20,000 pounds, but not exceeding 50,000 pounds; and to the nearest 10 pounds for scales having a capacity over 50,000 pounds. Except in the case of scales having a capacity of 2,000 pounds or less, not less than twenty percent of the total capacity of the weighing tank scale may be entered into the tank for gauging for determination of the tax: *Provided*, That the weighing of lesser quantities for determination of tax may be authorized by the assistant regional commissioner where the beam of the scale is calibrated in $\frac{1}{2}$ or 1 pound graduations and it is found by actual test that the scales break accurately at such graduations: *Provided further*, That lots of spirits weighing 1,000 pounds or less must be weighed on scales having one-half pound graduations. If liquids are used as distilling material, suitable weighing or measuring tanks must be provided for determining the quantity thereof.

(68A Stat. 639; 26 U. S. C. 5212)

§ 221.112 *Construction of weighing tanks.* Weighing tanks shall be constructed of metal and shall be stationary and each such tank shall be equipped with a suitable measuring device whereby

the contents will be correctly indicated. Each weighing tank shall be mounted on accurate scales and shall have plainly and legibly painted thereon the words "Weighing Tank," followed by its serial number and the capacity in gallons. The inlet and outlet pipe connections of each weighing tank must be fitted with valves so constructed that they can be secured with Government locks, and any other openings in such tanks must also be so constructed that they can be closed and similarly locked.

§ 221.113 *Test weights.* The distiller shall provide a set of ten 50-pound cast-iron test weights, which shall be certified by the National Bureau of Standards or State departments of weights and measures as conforming to class "C" requirements of the National Bureau of Standards: *Provided*, That test weights need not be furnished where all brandy produced is transferred directly from the distillery to bonded wine cellars for use in wine production and the distiller has the scales used for weighing brandy, including those upon which weighing tanks are mounted, checked and their accuracy certified to by State, county, or city departments of weights and measures or by responsible scale companies at intervals of not more than 6 months. If the distiller has provided such test weights at an internal revenue bonded warehouse operated by him on the same or contiguous premises, or at a bonded wine cellar or rectifying plant on contiguous premises, he need not provide a separate set of weights for the distillery. All test weights shall be placed under the control and in the custody of the storekeeper-gauger in charge, who shall keep them under Government lock when not in use.

(68A Stat. 639; 26 U. S. C. 5212)

§ 221.114 *Furnace doors, steam and fuel lines.* The door of every furnace of every still or boiler located on the distillery premises must be so constructed that it may be closed and locked with a Government lock in such a manner as will effectually prevent it from being opened and a fire lighted in the furnace or under the boiler: *Provided*, That where the stills are heated with steam and it is necessary to use the boilers for the generation of steam for other purposes during periods when distilling operations are suspended, the doors of the furnaces of such boilers need not be equipped for locking if the pipelines used to convey steam from the boilers to the stills are provided with valves equipped for locking with Government locks at the point where they enter each still. Where the boilers used for generating steam for the operation of the distillery are located off the distillery premises, the pipeline used to convey the steam to the distillery must be equipped with a valve so constructed that it may be locked with a Government lock, either at the point where it enters the distillery premises or at the point of entrance to the stills. If the stills are operated with fuel conveyed to them by pipeline, such pipeline must likewise be equipped for locking.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.115 *Distilling material measuring and storage tanks.* There must be provided at each fruit distillery one or more distilling material measuring tanks for measuring the distilling material received, and, if distilling material is to be stored on the premises, a requisite number of distilling material storage tanks: *Provided*, That where all distilling material used is received from a bonded wine cellar operated by the distiller on contiguous premises, and such distilling material is conveyed direct from measuring tanks in the bonded wine cellar to the chargers of the stills or to sumps for immediate transfer to the charges, as authorized by § 221.92, such tanks need not be installed in the distillery. Where brandy is received for redistillation the tanks used for storage thereof must have the inlets, outlets, and other openings thereof equipped for locking with Government locks and the tanks and pipelines used in connection therewith must be installed and equipped in accordance with §§ 221.119 and 221.130. Distilling material measuring tanks may be used as storage tanks when not needed for measuring distilling material received or used. Each distilling material measuring tank or storage tank must be constructed of wood, metal, concrete, or other suitable material, and so arranged as to permit proper examination thereof. Each such tank must have plainly and legibly painted thereon its designated use, as "Distilling Material Measuring Tank" or "Distilling Material Storage Tank," followed by its serial number, capacity in gallons, depth in inches, and, if of uniform dimensions and standing on end, the capacity per inch of depth. Where such tanks are of irregular dimensions or are lying on side, the distiller shall furnish to the assistant regional commissioner a table, in duplicate, showing the capacity of the tank for each inch of depth. The assistant regional commissioner will retain one copy of the table and forward the other to the storekeeper-gauger, who will retain the same in the Government office. The distiller shall provide an accurate measuring rod, marked in inches, or a steel tape, suitable for use in determining the contents of such tanks. Where such tanks are equipped with an accurate measuring device whereby the contents are correctly shown, the capacity per inch of depth need not be marked on the tank and a measuring rod or tape need not be provided.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.116 *Fermenters.* Where distilling material is to be produced on the distillery premises there must be provided appropriate fermenting tanks. Such tanks shall be located in the fermenting room or building, except that where closed fermenters are used they need not be enclosed in a room or building. The fermenters shall be constructed and marked in the same manner as distilling material measuring and storage tanks are required by § 221.115 to be constructed and marked, except that the designated use of such tanks will be represented by the words "Fermenting Tank," and the markings shall be painted on the tanks. Where fer-

menters are of irregular dimensions or are lying on side, the same provisions shall be made for determining their contents as are required by § 221.115 in the case of distilling material measuring and storage tanks.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.117 *Washwater receiving tanks.* If carbon dioxide is recovered, and the washwater is to be utilized in the manufacture of brandy, there must be provided a sufficient number of washwater receiving tanks, which shall be constructed of metal. Each such tank shall be equipped with a suitable measuring device whereby the actual contents will be correctly indicated. There must be painted on each tank the words, "Washwater Receiving Tank," followed by its serial number and the capacity in gallons. The outlet valve must be equipped for locking. If the washwater is not used in the manufacture of brandy, as provided by § 221.439, washwater receiving tanks need not be provided.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.118 *Stills.* The stills must be of substantial construction and must have a clear space of not less than 1 foot around them. The steam or fuel line to each still shall be equipped with a valve so constructed that it may be locked with a Government lock when the distillery is suspended, as required by § 221.693. The drain and washout pipes of stills must also, whenever practicable, be equipped with valves so constructed that they may be locked with Government locks. If there is a furnace under the stills or doublers, the door thereto must, as provided in § 221.693, be so constructed that it may be secured with a Government lock. There must be a clear space of not less than 2 feet around every doubler and condenser or worm tank. The doubler and worm tanks must be elevated not less than 1 foot from the floor. Every still must be numbered, commencing with number 1, and have painted thereon its designated use, such as "Beerstill," "Doubler," etc., and its number and spirit producing capacity in proof gallons in 24 hours, computed in accordance with the rules set forth in Subpart PP. Where the still is insulated or the manufacturer's serial number is otherwise obscured, such number will likewise be painted on the covering of the still.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.119 *General requirements for tanks.* All tanks used as receptacles for brandy between the outlet of the first condenser or worm and the receiving tanks shall be constructed of metal, unless enclosed within a securely constructed room equipped for locking with a Government lock, in which case the tanks may be constructed of wood or concrete. All tanks shall be equipped with a suitable measuring device, conforming to the requirements of § 221.120, whereby the actual contents will be correctly indicated. Where such tanks are of irregular dimensions, the distiller shall furnish to the assistant regional commissioner, a table, in duplicate, showing the capacity of the tank for each inch

of depth. The assistant regional commissioner will retain one copy of the table and forward the other to the storekeeper-gauger who will retain the same in the Government office. All tanks must be so constructed as to permit proper examination thereof, and so arranged as to leave an open space of not less than 3 feet between the top and the roof or floor above. Where tanks are equipped with manholes or valves in the top which are required to be locked with Government locks, suitable walks or landings with steps or stairways leading thereto and providing ready access to such manholes or valves must be constructed. All tanks, such as low-wine, singlings, heads and tails, fusel oil and distilled water tanks and similar equipment shall each have plainly and legibly painted thereon its designated use, serial number, and capacity in gallons. Manheads, inlets, and outlets of the tanks and all openings in the distilling apparatus and equipment, except column stills, whereby access may be had to the brandy must be provided with facilities for locking with Government locks or otherwise securely fastened and sealed: *Provided*, That distilled water storage tanks need not be so equipped unless a pipeline is connected therewith for the conveyance of distilled water to contiguous establishments, as provided in § 221.123. Tanks used as receptacles for brandy may be permanently connected with pipelines, for the conveyance thereto of air, and also distilled water, but the distilled water pipeline must be affixed to the top of the tank, and may not extend into the tank. Each such pipeline must be equipped with a control valve which may be locked with a Government lock. Pipelines used for the conveyance of air must also be equipped with a check valve located near the point of entry to the tank in order to effectively prevent any abstraction of spirits from the tank. Other pipelines, except those used for the conveyance of brandy, may not be permanently connected with such tanks.

(68A Stat. 628, 680, 917; 26 U. S. C. 5173, 5552, 7805)

§ 221.120 *Measuring devices.* All tanks used as receptacles for brandy shall be equipped with floats and counterweights and a proper scale, whereby the actual contents will be correctly indicated, except that tanks located in a locked room may be equipped with suitable and accurate glass gauges. The openings in the tanks for cords or wires for floats and counterweights must be no larger than are absolutely necessary to accommodate the cords or wires. Where tanks equipped with floats and counterweights are in a locked room the scale should be extended to the outside of the room to permit ascertainment of the contents of the tank and thus guard against overflow without the necessity of opening the door of the room. Where tanks in a locked room are equipped with glass gauges, a properly barred and secured window must be provided in the wall or door to permit reading the gauge.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.121 *Heads and tails tanks.* Every fruit distiller desiring to collect

heads and tails for destruction or removal for denaturation must provide for the purpose one or more tanks, each of which must be constructed and equipped in accordance with the provisions of § 221.119, and have painted thereon the words "Heads and Tails Tank," followed by its serial number and capacity in gallons. The tanks must be so arranged that the distillate to be collected therein will pass from the still into the tank through continuous and securely closed fixed pipes and vessels. The pipelines connecting the tanks with the stills or other apparatus must be constructed in accordance with § 221.130. Valves must be provided in the pipelines and so arranged as to control completely the flow of distillate both into and out of each tank. The construction of the valves must be such that they can be secured with Government locks.

(68A Stat. 628, 634, 680; 26 U. S. C. 5173, 5194, 5552)

§ 221.122 *Unfinished brandy tanks.* Whenever a fruit distillery established or operated under this part is to be operated alternately as such and as an industrial alcohol plant or as a registered distillery in accordance with Subpart N of this part, and the fruit distiller desires to retain unfinished brandy where the change in type of plant is to be temporary only, he must provide for the purpose one or more tanks, each of which must be constructed and equipped in accordance with the provisions of § 221.119 and have painted thereon the words "Unfinished Brandy Tank," followed by its serial number and capacity in gallons. The tanks must be so arranged that the unfinished brandy to be collected therein will pass from the still into the tank through continuous and securely closed, fixed pipes and vessels. The pipelines connecting the tanks with stills or other apparatus must be constructed in accordance with § 221.130. Valves must be provided in the pipelines and so arranged as to control completely the flow of unfinished brandy both into and out of each tank. The construction of the valves must be such that they can be secured with Government locks.

(68A Stat. 628, 634; 26 U. S. C. 5173, 5194)

§ 221.123 *Distilled water tanks.* Distilled water storage tanks shall be so located that their contents may be readily inspected by internal revenue officers, and each such tank shall have painted thereon the words "Distilled Water Storage Tank," followed by its serial number and capacity in gallons. Where distilled water is to be conveyed by pipeline to contiguous establishments operated under the internal revenue laws and regulations, the storage tanks from which the distilled water is to be conveyed must be so constructed that any necessary openings therein may be closed and locked. The pipeline must be an independent one, without any connection with any other pipe, tank, vessel, or utensil on the distillery premises: *Provided*, That where distilled water is to be so conveyed from two or more distilled water storage tanks, the pipeline may be connected with such tanks by permanent manifold connections. The pipeline

must be constructed of metal, or other suitable material, and exposed to view throughout its entire length. The valves, flanges, and other connections in such pipeline on the distillery premises must be brazed, welded, or otherwise secured in such a manner that the pipeline and its connections cannot be detached or altered without showing evidence of tampering.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.124 *Try boxes.* Try boxes must be provided and so constructed as to permit reading the proof of the brandy, as well as the temperature, without unlocking the same. Such boxes shall be substantially constructed, and shall be equipped for locking with a Government lock. Each try box must be provided with an overflow pipe to permit by-passing of the spirits around the valves controlling the flow from the try box to the receiving tank. The overflow pipe shall be brazed or welded to the pipeline leading to the low-wine, singlings, or receiving tanks.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.125 *Singlings tanks.* Where singlings are produced the distiller shall provide singlings tanks for the reception thereof. Singlings tanks shall be constructed and arranged in accordance with § 221.119, and equipped with a suitable measuring device conforming to the requirements of § 221.120, whereby the actual contents will be correctly indicated. Each singlings tank shall have plainly and legibly painted thereon the words "Singlings Tank," followed by its serial number and capacity in gallons. The singlings tank shall be connected by means of fixed pipelines with the stills in which the singlings are to be redistilled, or, if it is desired to mingle singlings with distilling material about to be distilled, the singlings tanks may be connected by means of fixed pipelines with the distilling material sump or the chargers of the still, or the distilling material pipeline leading to the still, in accordance with § 221.126. The pipelines connected with the singlings tanks shall be provided with valves to control the flow of singlings into and out of the tanks, and such valves shall be so constructed that they may be closed and secured with Government locks. Where the tanks are connected with a closed, locked still in which the singlings are redistilled, the valves controlling the flow of the singlings into and out of the tanks need not be equipped for locking with a Government lock. By the term "closed, locked still" is meant a still having all openings by which access may be had to the brandy or singlings closed and secured with Government locks or sealed.

(68A Stat. 628, 680; 26 U. S. C. 5173, 5552)

§ 221.126 *Sumps and chargers.* Where singlings are to be run into the sump or the chargers of the still and mixed with the distilling material for distillation, the sump and chargers, or the chargers, as the case may be, must be so constructed that the inlets, outlets, and other openings thereof may be closed and secured with Government locks. The pipeline between the sump and

chargers and the still shall be constructed and secured as provided in § 221.130.

(68A Stat. 628, 680; 26 U. S. C. 5173, 5552)

§ 221.127 *Receiving tanks.* The distiller shall provide a sufficient number of receiving tanks of adequate capacity, into which shall be conveyed all the brandy produced in the distillery. Such tanks will be located in the receiving room where such a room is provided. If no receiving room is provided, the distiller may, if he so desires, place receiving tanks in the brandy deposit room, or, if the tanks are constructed of metal, they may be located at some place in the distillery convenient for drawing off brandy. At distilleries where operations are not such as to require the daily attendance of a storekeeper-gauger, the receiving and singlings tanks shall be of such capacity as will necessitate the visit by an internal revenue officer not more than twice a month to gauge the brandy: *Provided*, That the assistant regional commissioner may approve tanks of less capacity where, by reason of the location of the distillery, he can assign a storekeeper-gauger to visit the distillery more often than twice a month to gauge the brandy, or where the quantity of brandy produced is such as to make the retention of 15 days' production in the receiving tanks inadvisable. Receiving tanks must be constructed and arranged in conformity with the requirements of § 221.119, and, in addition thereto, such tanks must be elevated not less than 18 inches from the floor and so separated that the internal revenue officer may pass completely around each. Each receiving tank shall be equipped with a suitable measuring device conforming to the requirements of § 221.120 whereby the actual contents will be correctly indicated. Each such tank shall have plainly and legibly painted thereon the words "Receiving Tank," followed by its serial number and the capacity in gallons. The receiving tanks must not be connected with each other, except that a connecting pipeline will be permitted between them in order to prevent loss of spirits by overflow. Such connecting pipeline must be located as close to the top of each receiving tank as the construction thereof will permit. It must be closed and all connections therein brazed or welded to prevent abstraction of brandy without showing evidence of tampering. A valve equipped for locking with a Government lock must be provided in such pipeline. Pipelines connected with receiving tanks must be brazed, welded, or otherwise secured and sealed to the tanks in such a manner that they cannot be detached or altered without showing evidence of tampering. Pipelines for the conveyance of distilled water, air, or other substances than brandy may not be permanently connected with receiving tanks, except as provided by § 221.119.

(68A Stat. 628, 640, 680; 26 U. S. C. 5173, 5215, 5552)

§ 221.128 *Stopcocks of receiving tanks.* The stopcocks which control the flow of brandy into the receiving tanks must be so arranged that the brandy may be run

into any of the tanks, and if the stopcocks are in the receiving room or brandy deposit room they must be controlled by rods, the handles of which must extend into the distillery or through the wall to the outside of the receiving room or brandy deposit room. The stopcocks controlling the flow of brandy out of receiving tanks must be so constructed that they may be securely locked with Government locks.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.129 *Brandy storage tanks.* Where brandy is to be temporarily stored in tanks pending removal from the distillery, such tanks shall be located in the brandy deposit room. The construction of brandy storage tanks shall conform to the requirements of § 221.119. Each brandy storage tank shall have plainly and legibly painted thereon the words "Brandy Storage Tank," followed by its serial number and the capacity in gallons.

(68A Stat. 628, 680; 26 U. S. C. 5173, 5552)

§ 221.130 *Pipelines.* The distillery apparatus and equipment must be closed and continuous, commencing with the first still in which the vapors rise and continuing with securely closed vessels and pipes to the receiving tanks in which the finished product is deposited. All such pipelines must be of a fixed and permanent character, constructed of metal, or other material affording necessary protection, and so arranged as to be exposed to view in their entirety. All valves, unions, flanges, and other detachable connections in the pipelines of the distilling equipment, from the point where the vapors rise in the first still to the receiving tanks, must be so secured by brazing, welding, fastening, and sealing, or locking with Government locks as to effectually prevent disconnection and access to the brandy. Pipelines authorized by this part for use in the conveyance of brandy from receiving tanks to storage tanks in the brandy deposit room and from the distillery to establishments on the same or contiguous premises shall be constructed, secured and exposed in like manner and shall be so arranged that each such pipeline can be completely emptied or drained after each transfer of brandy: *Provided*, That such pipelines may be connected with weighing tanks by means of flexible metal hose with the ends brazed or welded to the outlet of the tank and the pipeline, or by means of short detachable hose connections, if the end of the pipeline is fitted with a valve so constructed that it may be secured with a Government lock. Pipelines may likewise be connected with tank cars or tank trucks by short detachable hose connections.

(68A Stat. 628, 634, 680; 26 U. S. C. 5173, 5194, 5552)

§ 221.131 *Additional requirements for pipelines.* Where brandy is to be conveyed by pipeline to contiguous establishments as authorized by this part, a separate pipeline to each such establishment must be installed for the conveyance of the brandy: *Provided*, That the assistant regional commissioner may au-

thorize the use of a single pipeline where proper manifold connections, affording adequate control of the brandy to each establishment, are provided in the pipeline. A pipeline must also be provided for loading or unloading tank cars or tank trucks, except as provided by § 221.548. Such pipelines may be connected only to the tanks to or from which transfer of brandy is authorized, except, where two or more tanks are used for the same purpose, manifold connections may be used. Manifold connections must be equipped with valves which may be secured with Government locks and so arranged as to permit complete control of brandy into or out of each tank. There shall be painted on each pipeline, or on a durable sign affixed thereto, extending to and from a manifold a legend showing the kind and serial number of the tank or the type and registry number of the contiguous establishment with which the pipeline is connected. Where there are separate pipelines leading directly from a tank to a tank car or tank truck loading zone or an establishment on the same or contiguous premises, a legend indicating the use of such pipeline or the type and registry number of the contiguous establishment shall be placed thereon. Pipelines so used shall be kept painted in the colors required by § 221.136.

(68A Stat. 628, 634, 680; 26 U. S. C. 5173, 5194, 5552)

§ 221.132 *Preparation for sealing flanges.* Where flanges and other detachable connections in the pipelines (other than unions or valves) are not secured by welding or brazing, and are not to be secured by Government locks, they must be prepared by the distiller for sealing with "cap" seals by one of the following methods:

(a) By applying a "castle" nut with a hole drilled through the bolt, so the sealing wire may be passed through like a cotter pin, two such nuts being applied to each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three such nuts will be applied at approximately equal distances apart;

(b) By drilling a small hole through both nut and bolt, two such bolts and nuts being drilled for each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three such nuts will be applied at approximately equal distances apart; or

(c) By drilling a hole through the corner of the head of the bolt and one through the corner of the nut so the two will be sealed together, two such bolts and nuts being drilled for each flange, opposite each other, unless the flange is secured with an uneven number of bolts in which case three such nuts will be applied at approximately equal distances apart.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.133 *Preparation for sealing unions.* Where unions in the pipelines are not secured by welding or brazing, and are not to be secured by Government locks, they will be prepared for

sealing by enclosing the same in a metal box with holes for the sealing wire.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.134 *Preparation for sealing valves.* Where small gate and globe valves in the pipelines are not secured by welding or brazing, and are not to be secured by Government locks, they may be prepared for sealing by inclosing the packing nut and hood with a metal band or strap drawn tightly around the flange and fitted for reception of the sealing wire, or by drilling a hole in the packing nut so that sealing wire may be passed through and drawn around the pipe and sealed. Where valves have large flanges, such flanges may be sealed in the same manner as other flanges.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.135 *Distiller to furnish sealing materials.* All preparation for sealing, including the furnishing of necessary wire, straps, cups and covers, and the affixing of same, will be done by the distiller under the direction of the storekeeper-gauger. The wire used will be No. 16 gauge copper. The seals will be furnished and affixed by the storekeeper-gauger.

(68A Stat. 628; 26 U. S. C. 5173)

§ 221.136 *Colors for pipelines.* The pipelines in the fruit distillery used for conveying the following substances shall be kept painted in the colors indicated:

Black.....	Brandy or other finished spirits.
Blue.....	Vapor, singlings, high wines and low wines, or other unfinished spirits.
Red.....	Fermented mash, wine, or other distilling material.
Gray.....	Must or other unfermented material.
Brown.....	Stillage.
Yellow.....	Fusel oil.
White.....	Water.
Aluminum.....	Steam.
Orange.....	Air.
Olive green.....	Carbon dioxide gas.

These colors are intended for such pipelines only and are prescribed for the purpose of distinguishing such pipelines from each other and from all other pipelines on the premises which are painted but for which colors are not prescribed. The painting in one of the prescribed colors, or a color similar thereto, of a pipeline for which a color is not prescribed is prohibited. Pipelines for which colors are not prescribed may be painted in sections of contrasting colors.

(68A Stat. 628, 686; 26 U. S. C. 5173, 5618)

§ 221.137 *Sufficient equipment required.* Whenever a fruit distiller desires to produce in his fruit distillery two or more kinds of brandy simultaneously, he must provide sufficient fermenters, distilling apparatus, receiving tanks, and other equipment to permit the production thereof without the commingling of dissimilar brandy.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.138 *Hydrometers.* Proprietors of distilleries will provide hydrometer sets for their own use in determining the proof of brandy.

§ 221.139 *Distilleries heretofore established.* Fruit distilleries heretofore established may continue to operate if the present construction and equipment afford adequate security and protection to the revenue. The assistant regional commissioner may at any time require the distiller to make changes in construction and equipment conforming to the provisions of this part, if deemed necessary to safeguard the revenue or to permit more economical and efficient supervision by internal revenue officers. All fruit distilleries hereafter established, and changes in existing fruit distilleries, must be in conformity with this part.

(68A Stat. 628, 917; 26 U. S. C. 5173, 7805)

SUBPART H—QUALIFYING DOCUMENTS

§ 221.150 *Notice, Form 27½.* Every person engaged in the business of a fruit distiller, or intending to engage therein, or who wishes to continue in such business on and after the first day of May in each year, must give notice of such intention on Form 27½. This notice must be filed in triplicate with the assistant regional commissioner of the region in which the premises are located, before engaging in the business, and on May 1 of each year thereafter during continuance in such business. Except as provided in § 221.158, in the case of amended or supplemental notices, all of the information indicated by the lines of the form and the instructions printed thereon or issued in respect thereto, and as required by the regulations in this part, shall be furnished. Notices on Form 27½ must be signed and verified in accordance with the instructions printed on the form. Such notices must be numbered serially, commencing with number 1 and continuing in regular sequence for all notices thereafter filed, whether annual, amended, or supplemental. All data, written statements, affidavits, and other documents submitted in support of the notice shall be deemed to be a part thereof.

(68A Stat. 628, 749; 26 U. S. C. 5175, 6065)

§ 221.151 *Permit required.* Under the Federal Alcohol Administration Act and the regulations issued pursuant thereto (27 CFR Part 1) any person except an agency of a State or political subdivision thereof, or any officer or employee of any such agency intending to engage in the business of producing brandy is required to procure a permit therefor. Application for such permit should be filed with the assistant regional commissioner, at the time of filing the original notice, Form 27½.

(49 Stat. 978; 27 U. S. C. 203)

§ 221.152 *Description of premises.* The lot or tract of land on which the distillery is situated must be described on Form 27½ by courses and distances, in feet and inches, with the particularity required in conveyances of real estate. If the distillery premises consists of two or more lots or parcels, the condition of the title to which is not the same, the entire distillery premises shall be first described, followed by a separate description by courses and distances, in

feet and inches, of each such lot or parcel. The continuity of the distillery premises must be unbroken, except that the premises may be divided by a public street or highway, if parts of the premises so divided abut on such street or highway opposite each other. The premises may be similarly divided by a railroad right of way, if the railroad is a common carrier. In such cases, each tract of land constituting the distillery premises shall be described separately on the form.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.153 *Description of buildings and rooms.* All buildings and rooms on the distillery premises shall be accurately described on Form 27½. The description shall include the designated name of the building or room, which shall be according to its use, such as distillery building, brandy deposit room, etc., the materials of which constructed; the dimensions thereof, the location of doors, windows, and other openings, and the manner in which they are secured and protected. Each floor of each building shall be described separately. If more than one building or room is used for the same purpose, the name shall include an alphabetical designation to distinguish them.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.154 *Distilling capacity.* The estimated maximum number of proof gallons of brandy that can be distilled in a day of 24 hours must also be stated in the space provided therefor on Form 27½. The estimated quantity of brandy that can be distilled daily will be based on the capacity of the stills and the use of a maximum strength distilling material. The capacity of the stills will be computed in accordance with the rules set forth in Subpart MM of this part.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.155 *Daily production.* The estimated maximum quantity of each kind of material that the distiller intends to distill in a day of 24 hours, and the estimated maximum quantity in proof gallons of brandy that will be produced from such materials, including spirits produced by redistillation pursuant to Subpart S of this part, in a like period, shall be stated on Form 27½. Where the distiller intends to distill different kinds of materials than those covered by Form 27½, or to distill a larger quantity of the specified materials than the maximum indicated on such form, or to produce a larger quantity of brandy than the maximum indicated on the form, he must file with the assistant regional commissioner an amended notice, Form 27½, in triplicate, and, if the tax on the quantity of brandy to be produced during a period of 15 days will exceed the penal sum of the distiller's bond (if such penal sum is less than the maximum of \$100,000), a new or additional distiller's bond must be filed, as provided in § 184.219. Likewise where the quantity of brandy actually produced during any period of 15 days exceeds the estimated maximum quantity to be produced during such period, the distiller must file an amended notice,

on Form 27½ and where required, a new or additional distiller's bond, in accordance with § 221.177.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.156 *Condition of title to premises.* The condition of the title to the distillery premises shall be shown on Form 27½. If the distiller is not the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated, the name and address of the owner of the fee and of any mortgagee, judgment-creditor, or other person having a lien thereon, shall be stated. Where the written consent of the owner of the fee and of mortgagees, judgment-creditors, or other lienors, is filed as provided in §§ 221.159–221.161, or where an indemnity bond is filed in lieu of such written consent, as provided in §§ 221.163 and 221.166, such fact, together with information as to the kind, date, and amount of the encumbrance and the balance due thereon shall be shown on the notice in connection with the statement of the present condition of the title. In cases where an indemnity bond is filed, the date of the assistant regional commissioner's approval of the filing of such bond shall also be given.

(68A Stat. 598, 628, 630; 26 U. S. C. 5004, 5175, 5177)

§ 221.157 *Condition of title to apparatus and equipment.* The distiller's title to, or interest in, the distilling apparatus and equipment shall be shown on Form 27½. If the distiller is not the owner of the distilling apparatus and equipment, unencumbered by any mortgage, judgment, or other lien, the name and address of the owner and of any mortgagee, judgment-creditor, conditional sales vendor, or other lienor shall be stated. Where the written consent of the owner and of the mortgagees, judgment-creditors, conditional sales vendors, or other lienors, is filed as provided in § 221.159, or where an indemnity bond is filed in lieu of such written consent, as provided in §§ 221.163 and 221.166, such fact, together with information as to the kind, date, and amount of the encumbrance and the balance due thereon, or if the apparatus was purchased under a conditional sales contract, or other form of title retaining contract, the purchase price and the balance due, shall be shown in connection with the statement of the distiller's title to or interest in the property. In cases where an indemnity bond is filed, the date of the assistant regional commissioner's approval of the filing of such bond shall also be given.

(68A Stat. 598, 628, 630; 26 U. S. C. 5004, 5175, 5177)

§ 221.158 *Amended and supplemental notices.* Amended and supplemental notices on Form 27½ may be executed in skeleton form, except as to the items amended or supplemented. All other items which are correctly set forth in prior notices, and in which there has been no change since the last preceding notice, may be incorporated in the amended or supplemental notice by reference to the respective notice previously filed in which the item is fully and cor-

rectly set forth. Such incorporation by reference shall be made by entering for each such item in the space provided therefor the statement "No change since filing Form 27½, Serial No. _____" (the number being inserted), and the date of such form.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.159 *Consent, Form 1602.* Where the distiller is not the owner in fee of the lot or tract of land on which the distillery is situated, unencumbered by any mortgage, judgment, lien, or other encumbrance, or is not the owner of the distilling apparatus and equipment, unencumbered by any mortgage, judgment, lien, or other encumbrance, he must file (except as provided in § 221.162) the written consent, Form 1602, of the owner and of any mortgagee, judgment creditor, lienor, or other encumbrancer, conditional sales vendor, or prior lessee, that the premises or property may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority over any right, title, or interest of the person giving the consent, and that, in the case of the forfeiture of the premises or property, or any part thereof, the title to the same shall vest in the United States, discharged from any such right, title or interest.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.160 *Execution of consent.* The consent shall be executed on Form 1602, in triplicate, in accordance with the instructions printed thereon, duly acknowledged before an officer authorized to take acknowledgement of deeds, properly recorded, and submitted to the assistant regional commissioner with the notice, Form 27½, and made a part thereof. The acknowledgement and certificate of recordation shall be executed on all three copies of the form.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.161 *New consent when required.* A new consent will be required for each year beginning on the first day of May, unless the consent is given for a definite period of time exceeding one year, in which event the consent should be given in terms to expire at the beginning of an annual period, May 1. If, after such consent is filed, the premises are extended and the distiller is not the owner in fee unencumbered of the additional premises, or additional apparatus and equipment are installed and the distiller is not the owner thereof unencumbered, a consent on Form 1602 must be filed for such additional premises or apparatus and equipment. A new consent will also be required whenever there is a change of proprietorship, including a succession for a temporary period by a lessee or fiduciary, unless the consent procured by the predecessor specifically covers operation of the premises by his successor or assigns. In the event of failure of such consent, the distiller will be no longer qualified, unless an indemnity bond on Form 3-A is filed.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.162 *Bond in lieu of consent.* Where consent on Form 1602 cannot be obtained or where the distillery was sold at a judicial or other sale in favor of the United States, and there exists a right of redemption from such sale, the distiller may file in lieu of such consent, an indemnity bond, Form 3-A, as provided in § 221.163.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.163 *Permission required for filing bond, Form 3-A.* Where the distiller cannot obtain the written consent of the owner of the fee of the distillery premises, and of any mortgagee, judgment creditor, lienor, prior lessee, or other person having an encumbrance thereon, or where he cannot obtain such consent of the owner of the apparatus and equipment, and of any mortgagee, judgment creditor, conditional sales vendor, lienor, prior lessee, or other encumbrancer, and desires to file an indemnity bond, Form 3-A, in lieu of such consent, he shall file application, in triplicate, with the assistant regional commissioner for permission so to do.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.164 *Application.* The application shall contain (a) an accurate description of the lot or tract of land on which the distillery is situated, and of the distillery, the buildings, and the distilling apparatus and equipment thereon; (b) a full and clear statement of the condition of the title to the distillery premises and apparatus and equipment, including the name and address of the owner and of all mortgagees, judgment creditors, conditional sales vendors, prior lessees, and other persons having liens or encumbrances thereon, the kind, date, and amount of each encumbrance and the balance due thereon, and, in the case of apparatus and equipment purchased under a conditional sales contract, or other form of title retaining contract, the purchase price and the balance due; and (c) a full and clear statement of the reasons why the applicant cannot obtain the prescribed written consent. The assistant regional commissioner will take action on such application in accordance with the procedure prescribed in § 221.311.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.165 *Bond, Form 3-A.* If the application is approved, the distiller shall execute bond on Form 3-A, in triplicate, in conformity with the applicable provisions of §§ 221.190-221.202, and file the same with the assistant regional commissioner. The penal sum of the bond shall be equal to the appraised value of the lot or tract of land on which the distillery is situated, the distillery, the buildings, and the distilling apparatus. If, after such bond is filed, the value of the distillery premises, buildings or distilling apparatus is increased by additional land, buildings, or distilling apparatus, an additional bond on such form to cover the increase in value will be required: *Provided*, That if such increase in value is less than \$5,000, no additional bond will be required. In the event of a failure of bond on Form 3-A the distiller

will be no longer qualified, unless a new and satisfactory bond is filed.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.166 *Bond in lieu of consent where distillery is sold for United States.* Where a distillery is sold at a judicial or other sale in favor of the United States, the distiller may give bond on Form 3-A in lieu of the consent of the person possessing the right of redemption and of any mortgagee, judgment creditor, lienor, prior lessee, or other encumbrancer, and be allowed, upon complying with all other provisions of law and this part, to operate the distillery during the existence of the right of redemption from such sale. A distiller desiring to give bond in such case shall file application, in triplicate, with the assistant regional commissioner for permission so to do. The application shall contain a full and clear statement of the condition of the title, including the name and address of the person having the right of redemption and of all encumbrances, the kind, date, and amount of each encumbrance, the date of the sale and the date of expiration of the right of redemption. The penal sum of the bond shall be equal to the appraised value of the lot or tract of land on which the distillery is situated, together with the buildings and distillery apparatus. If, after such bond is filed, the value of the distillery premises, buildings or distilling apparatus is increased by additional land, buildings or distilling apparatus, an additional bond on such form to cover the increase in value will be required: *Provided*, That if such increase in value is less than \$5,000, no additional bond will be required.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.167 *Appraisal.* The appraisal to determine the penal sum of the bond on Form 3-A shall be made by two or more competent persons designated by the assistant regional commissioner. The appraisers shall render to the assistant regional commissioner a report, in duplicate, showing separately the value of the land and buildings and the distilling apparatus, and containing a full and clear statement of the methods employed by them in determining their valuations. The appraisal shall be at the expense of the distiller, unless it is made by internal revenue officers.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.168 *Certificate of title.* The distiller shall submit a certificate and, when required, an abstract, in triplicate, of the title to the distillery premises, prepared by a person authorized by the laws of the State in which the distillery is located to prepare such documents. The document must contain an accurate description of the distillery premises corresponding to that set forth in the distiller's notice, and any liens or other encumbrances on the property must be fully described. Such certificates shall accompany the distiller's notice and be made a part thereof.

(68A Stat. 598, 630; 26 U. S. C. 5004, 5177)

§ 221.169 *Corporate documents.* There must be submitted with, and made a part of, the original or initial notice on Form 27½, given by a corporation to engage in the business of a fruit distiller, properly certified copies, in triplicate, of the following documents:

- (a) Articles of incorporation and any amended articles of incorporation.
- (b) Certificate of incorporation.
- (c) Certificate authorizing corporation to operate in State where distillery is located, if other than that in which incorporated.
- (d) Extracts of minutes of meetings of stockholders, showing election of directors.
- (e) By-laws.
- (f) Extracts of the minutes of meetings of the board of directors, showing the election of officers.
- (g) Extracts of the minutes of meetings of the board of directors, authorizing certain officers or other persons to sign for the corporation.
- (h) List of the names and addresses of the officers and directors.
- (i) List of stockholders, as provided in § 221.170.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.170 *List of stockholders.* In the case of corporations and similar legal entities, there must be submitted with Form 27½, at the commencement of business and annually thereafter on May 1, a list of the names and addresses of all stockholders and other persons interested in the corporation or other legal entity and the amount and nature of the stock-holding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him: *Provided*, That where more than 20 persons are interested in the corporation or other legal entity as stockholders or otherwise, there need be furnished only the names and addresses and the amounts and nature of the stock-holding or other interest of the 20 persons having the largest ownership or other interest in each of the respective classes of stock or other interest, except where more complete information shall be specifically required by the assistant regional commissioner: *And provided further*, That where there has been no change in the stockholders and other persons interested in the corporation or other legal entity, the distiller may furnish, in connection with the annual notice, a certified statement, in triplicate, to that effect in lieu of the prescribed list. Where a corporation operates two or more distilleries or other plants situated in the same region, or wholly owns one or more subsidiaries operating distilleries or other plants so situated, and in connection with qualifying for the operation of one of such distilleries or plants files a list of stockholders and other persons interested, as prescribed in this section, the filing of an additional list for each distillery will not be required, provided that in lieu of such additional list there is submitted with the distiller's notice, Form 27½, a certificate, in triplicate, definitely identifying the corporation and plant with whose notice the list of stockholders and other

persons interested is filed, and giving the date of the filing thereof.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.171 *Affidavit.* In the case of a corporation, there must be submitted with each list of stockholders an affidavit, in triplicate, executed by an officer of the corporation authorized so to do, showing the number of shares of each class of stock or other evidence of ownership, such as voting trust certificates, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders, and certifying to the correctness of the list of stockholders or the statement authorized to be furnished with the notice in lieu of such list. In the case of an individual owner, partnership, or association, there must be submitted with Form 27½, at the commencement of business and annually thereafter on May 1, an affidavit, in triplicate, giving the name of every person interested or to be interested in the distillery, whether such interest appears in the name of the interested party or in the name of another for him.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.172 *Articles of partnership or association.* In the case of a partnership or association, a certified copy, in triplicate, of the articles of partnership or association, if any, and, where the business is to be conducted under a firm or trade name, a trade name certificate or statement in lieu thereof conforming to provisions of § 221.243, shall be submitted with and constitute a part of the notice, Form 27½.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.173 *Power of attorney, Form 1534.* If the notice or other qualifying documents are signed by an attorney in fact for an individual, partnership, association, or corporation, or by one of the members for a partnership or association, or, in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 221.169, such notice or other qualifying documents must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same. Such powers of attorney will be executed on Form 1534, in triplicate, and submitted to the assistant regional commissioner.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.174 *Execution of power of attorney.* Where the principal giving the power of attorney is an individual, it must be executed by him in person, and not by an agent. In the case of a partnership or association, powers of attorney authorizing one or more of the members, or another person, to execute documents on behalf of the partnership or association must be executed by all of the members constituting the partnership or association. However, if one or more members less than the whole number constituting the partnership or association have been delegated the authority to appoint agents or attorneys in fact, the power of attorney may be

executed by such member or members, provided it is supported by a duly authenticated copy, in triplicate, of the document conferring authority upon the member or members to execute the same. Where, in the case of a corporation, powers of attorney are executed by an officer thereof, such documents must be supported by triplicate copies of the authorization of such officer so to do, certified by the secretary or assistant secretary of the corporation, under the corporate seal, if any, to be true copies.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.175 *Duration of power of attorney.* Powers of attorney authorizing the execution of documents on behalf of a person engaged in, or intending to engage in, the business of a fruit distiller shall continue in effect until written notice, in triplicate, of the revocation of such authority is received by the assistant regional commissioner, unless terminated by operation of law.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.176 *Bond, Form 30½.* Every person intending to commence or to continue the business of a fruit distiller shall, upon filing his notice of such intention, Form 27½, and before proceeding with such business, and on the 1st day of May of each succeeding year, execute bond on Form 30½, in triplicate, in conformity with the provisions of Subpart I of this part, and file the same with the assistant regional commissioner.

(68A Stat. 629; 26 U. S. C. 5176)

§ 221.177 *Penal sum.* The penal sum of the distiller's bond, Form 30½, shall be not less than the amount of the internal revenue tax at the rate prescribed by law on the maximum quantity of brandy that will be distilled in the distillery during a period of 15 days of 24 hours each, but in no case shall the penal sum of the bond be less than \$5,000 or greater than \$100,000. Where the distiller has not furnished bond in the maximum penal sum of \$100,000 and he intends to produce a larger quantity of brandy than that covered by his bond, he must file a new or additional bond in a sufficient penal sum to cover the tax on the increased quantity to be produced. Likewise, where the quantity of brandy actually produced during any period of 15 days exceeds the penal sum of the bond on file, if in less than the maximum penal sum, the distiller must furnish immediately a new or additional bond in a sufficient penal sum, effective as of the beginning of such period. If an additional bond is furnished in either case, it must be in accordance with § 221.201.

(68A Stat. 629; 26 U. S. C. 5176)

§ 221.178 *Registry of stills, Form 26.* Every person having in his possession or custody, or under his control, any still or distilling apparatus set up must register the same with the assistant regional commissioner for the region in which it is located, on Form 26, immediately it is set up, in accordance with the instructions on the form: *Provided*, That stills or distilling apparatus not used or intended to be used for the distillation, redistillation, or recovery of

distilled spirits are not required to be registered. Such registration shall be verified in the manner prescribed in § 221.150 with respect to notice on Form 27½.

(68A Stat. 628; 26 U. S. C. 5174)

§ 221.179 *Plat and plans.* Every person intending to engage in the business of a fruit distiller must submit to the assistant regional commissioner with his notice, Form 27½, an accurate plat of the distillery premises and accurate plans of the buildings, apparatus, and equipment thereon, in triplicate, conforming to the requirements of Subpart J of this part.

(68A Stat. 631; 26 U. S. C. 5178)

§ 221.180 *Statement of process.* There must be submitted to the assistant regional commissioner with the fruit distiller's original notice, Form 27½, a statement of process, in quadruplicate. Upon any change in the process, a new statement, in quadruplicate, must be filed with the assistant regional commissioner. Reference by date to the current statement of process must be incorporated in each annual notice, Form 27½. The statement of process should present a step by step description of the mashing, fermenting, distilling, purifying and refining processes used in the production of each type of brandy. It must show specifically the kind and approximate quantity or proportion of all nonalcohol producing materials or substances added to the distilling material for the purpose of providing yeast food or for inhibiting the action of wild yeast, or for any other purpose, and all materials used for purifying, refining or otherwise treating the spirits. Samples of any such material or substance will be prepared and furnished to the assistant regional commissioner, upon request, for analysis by Government chemists. Materials or chemicals which are volatile and would remain incorporated with the finished brandy after final distillation may not be used.

(68A Stat. 607; 26 U. S. C. 5025)

§ 221.181 *Additional information.* The assistant regional commissioner may at any time, in his discretion, require the proprietor of a fruit distillery to furnish such additional information as he may deem necessary.

SUBPART I—BONDS AND CONSENTS OF SURETY

§ 221.190 *General requirements.* Every person required to file a bond or consent of surety under this part shall prepare and execute it on the prescribed form, in triplicate, in accordance with this part and the instructions printed on the form, and shall submit it to the assistant regional commissioner.

(68A Stat. 629, 647; 26 U. S. C. 5247)

§ 221.191 *Surety or security.* Bonds required by this part shall be given with corporate surety or collateral security: *Provided*, That in any case where the distiller operates an internal revenue bonded warehouse on the distillery premises, and the distiller's bond, Form 30½, is in the maximum penal sum of \$100,000, it may be accepted without

surety if it is supported by the consent of the surety on the transportation and warehousing bond, Form 1571, which bond in such case shall be in the maximum penal sum of \$200,000. If bonds on Forms 30½ and 1571 in the maximum penal sums stated are not given, separate bonds on said forms, each with surety or security, must be given in sufficient penal sums.

(61 Stat. 646, 68A Stat. 629, 630, 647, 680; 6 U. S. C. 15, 26 U. S. C. 5176, 5177, 5247, 5551)

§ 221.192 *Corporate surety.* Surety bonds may be given only with surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds, subject to the limitations prescribed by the Secretary in Treasury Department Form 356—Revised, and subject to such amendments as may be issued from time to time.

(61 Stat. 646, 68A Stat. 629, 630, 647, 680; 6 U. S. C. 15; 26 U. S. C. 5176, 5177, 5247, 5551)

§ 221.193 *Two or more corporate sureties.* A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties: *Provided*, That each corporate surety may limit its liability in terms upon the face of the bond in a definite, specified amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in Treasury Department Form 356—Revised. When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required penal sum of the bond.

(61 Stat. 646, 68A Stat. 647; 6 U. S. C. 6, 8, 26 U. S. C. 5247)

§ 221.194 *Powers of attorney.* Powers of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of corporate sureties are required to be filed with, and passed upon by, the Commissioner of Accounts, Surety Bonds Branch, Treasury Department. Such powers and other evidence of appointment need not be filed with, or submitted to, assistant regional commissioners.

(61 Stat. 646, 68A Stat. 647; 6 U. S. C. 6, 8, 26 U. S. C. 5247)

§ 221.195 *Interest in business.* The surety must have no interest whatever in the business covered by the bond.

(68A Stat. 629, 630, 647, 680; 26 U. S. C. 5176, 5177, 5247, 5551)

§ 221.196 *Deposit of collateral.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of surety. Assistant regional commissioners on receiving such bonds or notes, or other obligations, pledged and deposited by principals as collateral security in lieu of surety, shall deposit such securities, in accordance with the requirements of Department Circular No. 154, revised (31 CFR Part 225).

(61 Stat. 650; 6 U. S. C. 15)

§ 221.197 *Consents of surety.* Consents of surety to a change in the terms of a bond must be executed on Form 1533, in as many copies as are required of the bond which they affect, by the principal and all sureties with the same formality and proof of authority to execute as are required for the execution of bonds. Form 1533 will be used by obligors on collateral bonds as well as those on surety bonds. The Form 1533 must properly identify the bond affected thereby and state specifically and precisely what is covered by the extended terms thereof. The consent may be executed for the surety company by an agent or attorney in fact duly authorized so to do by power of attorney filed by the surety with the appropriate assistant regional commissioner; or the consent may be executed by the home office officials of such corporate surety.

(68A Stat. 629, 630, 647, 680; 26 U. S. C. 5176, 5177, 5247, 5551)

§ 221.198 *Approval required.* No individual, firm, partnership, corporation, or association, intending to commence or to continue the business of a fruit distiller, shall commence or continue such business until all bonds in respect of such business required by any provision of law have been approved.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.199 *Authority to approve.* Assistant regional commissioners are authorized to approve all bonds and consents of surety required by this part.

(68A Stat. 629, 630; 26 U. S. C. 5176, 5177)

§ 221.200 *Cause for disapproval.* Bonds or consents of surety submitted by any individual, firm, partnership, corporation, or association, in respect to the business of a fruit distiller may be disapproved if the individual, firm, partnership, corporation, or association giving the same, or owning, controlling, or actively participating in the management of such business of the individual, firm, partnership, corporation, or association giving the same, shall have been previously convicted in a court of competent jurisdiction of (a) any fraudulent noncompliance with any provision of any law of the United States, if such provision relates to internal revenue or customs taxation of distilled spirits, wines, or fermented malt liquors, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association upon payment of penalties or otherwise; or (b) any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, fermented malt liquor, or other intoxicating liquor. The fruit distiller's bond, Form 30½, may also be disapproved if the situation of the distillery is such as would enable the distiller to defraud the United States.

(68A Stat. 629, 630; 26 U. S. C. 5176, 5177)

§ 221.201 *Additional or strengthening bonds.* In all cases where the penal sum of the bond on file and in effect is not sufficient, computed as prescribed by

law and this part, the principal may give an additional or strengthening bond in a sufficient penal sum, provided the surety thereon is the same as on the bond already on file and in effect; otherwise a new bond covering the entire liability will be required. Such additional or strengthening bonds, being filed to increase the bond liability of the principal and the surety, are in no sense substitute bonds, and the assistant regional commissioner will refuse to approve any additional or strengthening bond where any notation is made thereon intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full penal sum. Additional or strengthening bonds must show the current date of execution and the effective date in the blank spaces provided therefor. Such bonds must have marked thereon, by the obligors at the time of execution, "Additional Bond," or "Strengthening Bond."

(68A Stat. 629, 630, 647, 680; 26 U. S. C. 5176, 5177, 5247, 5551)

§ 221.202 New bond. A new bond may be required at any time in the discretion of the assistant regional commissioner. A new bond shall be required immediately in the case of the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, must execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When, in the opinion of the assistant regional commissioner, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal will be required to give a new bond. Where a bond is found to be not acceptable, the principal shall be required to file immediately a new and satisfactory bond, or discontinue business forthwith.

(68A Stat. 629, 630, 647, 680; 26 U. S. C. 5176, 5177, 5247, 5551)

§ 221.203 Superseding bond. Where a new bond is submitted by the principal to supersede a bond or bonds then in effect, and such superseding bond has been approved, notice of termination of the superseded bond may be issued as provided in Subpart O of this part. Superseding bonds must show the current date of execution and the date they are to be effective and each such bond shall have marked thereon, by the obligors at the time of execution, "Superseding Bond."

(68A Stat. 629, 630, 647, 680; 26 U. S. C. 5176, 5177, 5247, 5551)

SUBPART J—PLATS AND PLANS

§ 221.215 Plat and plans required. Every person intending to engage in the business of a fruit distiller must, as provided in § 221.179, file an accurate plat and accurate plans of the distillery premises, apparatus, and equipment, in triplicate, with the assistant regional commissioner.

(68A Stat. 631, 917; 26 U. S. C. 5178, 7805)

§ 221.216 Preparation. Every plat and plan shall be drawn to scale and each sheet thereof shall bear a distinctive title, enabling ready identification. The cardinal points of the compass must appear on each sheet, except the elevational plans. The minimum scale of any plat will not be less than $\frac{1}{8}$ inch per foot. Each sheet of the original plat and plans shall be numbered, the first sheet being designated number 1, and the other sheets numbered in consecutive order. Plats and plans shall be submitted on sheets of tracing cloth, opaque cloth, or sensitized linen. The dimensions of plats and plans shall be 15 by 20 inches, outside measurement, with a clear margin of at least 1 inch on each side of the drawing, lettering or writing. Plats and plans may be original drawings, or reproductions made by the "ditto process," or by blue or brown line litho-print, if such reproductions are clear and distinct.

(68A Stat. 631; 26 U. S. C. 5178)

§ 221.217 Depiction of distillery premises. Plats must show the outer boundaries of the distillery premises by courses and distances, in feet and inches, in a color contrasting with those used for other drawings on the plat, and the point of beginning, with respect to its distance and bearings, from some near and well-known landmark, and must contain an accurate depiction of the building or buildings comprising the premises, and any driveway, public highway, or railroad right-of-way adjacent thereto, or connecting therewith. The depiction of the premises shall agree with the description in the notice, Form 27½. If the distillery premises consists of two or more lots or parcels of land, the condition of the title to which is not the same, each such lot or tract shall be separately depicted by courses and distances, in feet and inches, and such lots or parcels shall be delineated or cross-hatched in contrasting colors. If two or more buildings are to be used, the designated name of each shall be indicated, and all pipelines or other connections, if any, between the same, depicted. Where two or more buildings are used for the same purpose, the name of each building shall include an alphabetical designation, beginning with "A", and they shall be so shown on the plat. All first floor exterior doors of each building on the premises will be shown on the plat. Except as provided in § 221.222, all pipelines leading to or from the premises, the purpose for which used, and the points of origin and termination will be indicated on the plat.

(68A Stat. 631; 26 U. S. C. 5178)

§ 221.218 Contiguous premises. Where an internal revenue bonded warehouse, bonded wine cellar, rectifying plant, or tax-paid bottling house, or other premises on which liquors are manufactured stored, or sold, is contiguous to the distillery premises the plat must show the relative location of the distillery and such contiguous premises, and all pipelines, if any, and other connections between them. The outlines of such contiguous premises and the

distillery premises must also be shown in contrasting colors.

§ 221.219 Floor plans. The plans shall include a floor plan of each floor of each building, showing the general dimensions of the rooms and floors, and the location of all doors, windows, and other openings, and how such openings are protected. All fixed apparatus and equipment, except pipelines, must be shown in their exact location on the floor plans, and their designated use indicated. Pipelines may also be shown, if desired. In the case of stills, tanks, and similar equipment, the serial number and capacity shall also be shown.

(68A Stat. 631; 26 U. S. C. 5178)

§ 221.220 Elevational flow diagrams. Elevational flow diagrams (plans) shall be submitted covering: (a) Distilling material system, (b) mashing and fermenting systems, (c) distilling system, and (d) the receiving tank and brandy deposit room system. Such diagrams or plans shall clearly depict all equipment in its relative operating sequence, and elevation by floors with all connecting pipelines, valves, Government locks, measuring devices, etc. The elevation by floors on the diagrams may be indicated by horizontal lines representing floor levels. All the flow diagrams as a unit must show the flow of the distilling material and the resulting products, through the distilling material tanks, fermenters, sumps, stills, doublers, try boxes, and other equipment, and the deposit and removal of the finished brandy from the receiving tanks and the brandy deposit room, if any. All major equipment, fermenters, stills, etc., must be identified on these plans as to number and use. The elevational flow diagrams must be properly identified, and so drawn that all fixed pipelines, except those indicated by § 221.222 may be readily traced from beginning to end: *Provided*, That pipelines leading to and from other buildings on the same or contiguous premises may be designated as to point of origin or termination. The direction of the flow of the brandy through the pipelines must be indicated on the flow diagram by arrows. Other types of plans that clearly depict the information required herein may be submitted in compliance with this section.

(68A Stat. 631; 26 U. S. C. 5178)

§ 221.221 Pipelines in colors. The pipelines must be shown on the plans in the colors in which they are required to be painted, as prescribed by § 221.136.

§ 221.222 Pipelines exempted. Approved public or private utility service lines, such as sewers, electric or gas conduits or pipes, and approved sprinkler, refrigeration, or heating systems which have no connection with the distilling equipment or any apparatus or pipe line connected therewith, need not be shown on the plans, provided that the point of entry to the bonded premises shall be indicated on the plans.

(68A Stat. 26 U. S. C. 5178)

§ 221.223 Certificate of accuracy. The plat and plans shall bear a certi-

cate of accuracy in the lower righthand corner of each sheet, signed by the distiller, the draftsman, and the assistant regional commissioner, substantially in the following form.

(Name of distiller) (Reg. No.)
 (Address)
 Approved _____
 (Date)
 (Assistant Regional Commissioner)
 Accuracy certified by:
 (Name and capacity—
 for the distiller)
 (Draftsman)
 19 _____ Sheet No. _____
 (Date)

(68A Stat. 628, 917; 26 U. S. C. 5178)

§ 221.224 *Revised plats and plans.* The sheets of revised plats and plans shall bear the same number as the sheets superseded, but will be given a new date. Any additional plats and plans shall be given a new number in consecutive order, or will be otherwise numbered and lettered in such manner as will permit the filing of the plats and plans in proper sequence.

(68A Stat. 631; 26 U. S. C. 5178)

SUBPART K—REQUIREMENTS GOVERNING CHANGES IN NAME, PROPRIETORSHIP, CONTROL, LOCATION, PREMISES, AND EQUIPMENT, AND IN THE TITLE TO THE DISTILLERY PROPERTY OR THE ENCUMBRANCE THEREOF

§ 221.235 *General requirement.* Under the law, notice in writing must be given, in the form prescribed by the Director, Alcohol and Tobacco Tax Division, to the assistant regional commissioner in case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of the distillery.

(68A Stat. 628, 917; 26 U. S. C. 5175, 7805)

CHANGE IN INDIVIDUAL, FIRM, OR CORPORATE NAME

§ 221.236 *Amended notice, Form 27½, and amended basic permit.* Where there is a change in the individual, firm, or corporate name of the distiller, the distiller must submit to the assistant regional commissioner an amended notice on Form 27½, in triplicate, covering the new name, which notice must be approved before operations may be commenced under the new name. He must also procure from the assistant regional commissioner under the Federal Alcohol Administration Act an amended basic permit authorizing operation of the distillery under the new name.

(68A Stat. 628, 917; 26 U. S. C. 5175, 7805)

§ 221.237 *Amended articles of incorporation, etc.* Where there is a change in the corporate name of the distiller, he must submit to the assistant regional commissioner certified copies, in triplicate, of the amended articles of incorporation and the amended certificate of incorporation issued under the laws of the State in which incorporated, covering the change in the corporate name. If the operations are conducted in a

State other than the State in which incorporated, there must also be submitted to the assistant regional commissioner certified copies, in triplicate, of the amended certificate issued under the laws of the State in which the operations are conducted authorizing the corporation to operate under its new name in such State. If other documents than those specified are required under the laws of the State to effect a change in the name of the corporation, certified copies, in triplicate, of such documents must be submitted with the notice, Form 27½, in lieu of those specified.

(68A Stat. 628, 917; 26 U. S. C. 5175, 7805)

§ 221.238 *Amended articles of partnership or association.* Where there is a change in the name of the partnership or association, the distiller will submit to the assistant regional commissioner certified copies, in triplicate, of the amended articles of partnership or association, if any.

(68A Stat. 628, 917; 26 U. S. C. 5175, 7805)

§ 221.239 *Sign.* Where there is a change in the individual, firm, or corporate name, the distiller will change the distillery sign to conform to the provisions of § 221.105.

(68A Stat. 632; 26 U. S. C. 5180)

§ 221.240 *Branding and warehousing.* Where there is a change in the individual, firm, or corporate name, the distiller will, upon receipt of the assistant regional commissioner's authorization, as provided in § 221.320, mark and brand and warehouse under such new name the finished brandy produced thereunder.

(68A Stat. 633, 917; 26 U. S. C. 5193, 7805)

§ 221.241 *Records.* Where there is a change in the individual, firm, or corporate name, the distiller will keep records and submit reports covering operations under the new name, as provided in § 221.713, in the case of operations under different trade names and styles.

(68A Stat. 637, 917; 26 U. S. C. 5197, 7805)

TRADE NAMES

§ 221.242 *Basic qualification required.* Where the distillery is to be operated under a trade name or style or under a number of trade names or styles, the distiller must file with the assistant regional commissioner, a letterhead application for approval of such name or names. The assistant regional commissioner will forward such application to the National Office for action by the Director, Alcohol and Tobacco Tax Division. If the Director, Alcohol and Tobacco Tax Division, finds that the name or names may be used, he will so advise the assistant regional commissioner. The distiller will be advised accordingly. He may then file with the assistant regional commissioner an amended Form 27½ as provided in § 221.158 for permission to operate under the trade name (only one) specifying the date operations are to begin, and if the additional name or style has not previously been specified in the Federal Alcohol Administration Act Permit, he must also procure from the assistant regional commissioner an amended basic permit. The

assistant regional commissioner's action will be in accordance with § 221.320.

(68A Stat. 628, 917; 26 U. S. C. 5175, 7805)

§ 221.243 *Trade names certificate; amended articles of incorporation.* It will be the responsibility of the distiller to comply with all state laws by filing certified copies of trade names and amended articles of incorporation where required. If no such certificate, or amended articles of incorporation are required, the distiller will furnish a statement to that effect.

(68A Stat. 628, 917; 26 U. S. C. 5175, 7805)

§ 221.244 *Sign.* The distillery sign must be changed to conform to the provisions of § 221.105, unless operation under the trade name is to be temporary, in which event, it will not be necessary to change such sign.

(68A Stat. 632; 26 U. S. C. 5180)

§ 221.245 *Branding and warehousing.* The finished brandy must be branded and warehoused under each trade name in which produced as provided in § 221.712.

(68A Stat. 633, 917; 26 U. S. C. 5193, 7805)

§ 221.246 *Records.* Appropriate entries must be made in the distillery records covering operations under each trade name as provided in § 221.713.

(68A Stat. 637, 917; 26 U. S. C. 5197, 7805)

§ 221.247 *Period of operations.* Where the distillery is operated under more than one trade name or style, the operation under each must be in multiples of 24 hours.

§ 221.248 *Subsequent operations.* The basic qualifying documents having once been filed by the distiller and approved by the assistant regional commissioner, the distiller will qualify for subsequent operations, that is, changing from one trade name to another trade name, or from a trade name to the principal, or vice versa, in accordance with the procedure prescribed in § 221.293.

CHANGES IN PROPRIETORSHIP

§ 221.249 *Requirements for transfer.* Where there is to be a change in the proprietorship of the distillery, the outgoing distiller must, preparatory to transfer of the business to the successor, comply with the requirements of §§ 221.250 to 221.255.

§ 221.250 *Notice, Form 27½.* If the outgoing distiller is to discontinue permanently the business of distilling brandy, he will file with the assistant regional commissioner Form 27½, in triplicate, stating thereon the purpose to be "Discontinuance of business," and giving the date of the discontinuance. If the outgoing distiller is to temporarily discontinue the business of distilling during operation of the distillery by the successor, the statement of the purpose on the notice shall conform to the provisions of § 221.290 (a).

(68A Stat. 628, 632, 917; 26 U. S. C. 5175, 5191, 7805)

§ 221.251 *Registry of stills.* If the business is to be permanently discon-

tinued, the distiller will file Form 26, in triplicate, in accordance with § 221.705. (68A Stat. 628, 917; 26 U. S. C. 5174, 7805)

§ 221.252 *Notice of suspension.* The distiller will file with the assistant regional commissioner Form 124, in duplicate, in accordance with § 221.690.

(68A Stat. 632, 917; 26 U. S. C. 5191, 7805)

§ 221.253 *Finished brandy.* The distiller will draw off, brand and mark, and remove all finished brandy in the individual, firm, or corporate name, or trade name or style, under which they were produced.

(68A Stat. 633, 917; 26 U. S. C. 5193, 7805)

§ 221.254 *Materials and unfinished brandy.* If distilling materials and unfinished brandy are to be transferred to the successor, the distiller will file with the assistant regional commissioner Form 1614, in quadruplicate, in accordance with §§ 221.740 and 221.741: *Provided*, That in the case of alternate operations by two or more qualified distillers, to be authorized pursuant to notice on Form 1696, the outgoing distiller will file the four copies, duly executed, with the storekeeper-gauger in charge. If the unfinished brandy and distilling materials are not to be so transferred, the distiller will completely finish operations in accordance with the provisions of said sections.

(68A Stat. 632, 633; 26 U. S. C. 5191, 5193)

§ 221.255 *Records.* The distiller will make appropriate entries in the distillery records and submit reports in accordance with the provisions of § 221.743.

(68A Stat. 637, 917; 26 U. S. C. 5197, 7805)

§ 221.256 *Qualification of successor.* Where there is a change in proprietorship, and the successor intends to continue operation of the plant as a fruit distillery, he must comply with the requirements of §§ 221.257-221.263.

§ 221.257 *Lessee.* If the successor is a lessee, he must qualify in the same manner as the proprietor of a new distillery, regardless of the temporary nature of the tenancy, except that he may adopt the plat and plans of his predecessor as provided in § 221.261. The lessee must also file with the assistant regional commissioner certified copies in triplicate of the lease.

§ 221.258 *Other nonfiduciary successor.* If the change in proprietorship is brought about by any other means, except by the appointment of an administrator, executor, receiver, trustee, assignee, or other fiduciary, the successor must likewise qualify in the same manner as the proprietor of a new distillery except that he may adopt the plat and plans of his predecessor as provided in § 221.261.

§ 221.259 *Fiduciary.* If the successor is an administrator, executor, receiver, trustee, assignee, or other fiduciary, and intends to produce brandy, or to possess or dispose of brandy on hand in the distillery, he must comply with the provisions of Subparts D and H of this part to the extent that such provisions are applicable, except that in lieu of

filing a new bond and new plat and plans, the fiduciary may furnish a consent of surety extending the terms of his predecessor's bond and adopt the plat and plans of such predecessor in accordance with §§ 221.260 and 221.261. The fiduciary must also furnish certified copies, in triplicate, of the order of the court or other pertinent documents showing his qualifications as such fiduciary. The effective date of the qualifying documents filed by a fiduciary should be the same as the date of the court order, or the date specified therein for him to assume control.

§ 221.260 *Consent of surety.* The consent of surety extending the terms of the predecessor's bond to cover operation of the distillery by a fiduciary must conform to the requirements of § 221.197, and be executed by both the fiduciary and surety.

§ 221.261 *Adoption of plat and plans.* The plat and plans of the distillery may be adopted by a successor where they correctly describe and depict the distillery premises and the buildings, apparatus, and equipment thereon, to be taken over by the successor. The adoption by a successor of the plat and plans of his predecessor shall be in the form of a certificate, in triplicate, in which shall be set forth the name of the predecessor, the address and registered number of the distillery, a description of the distillery premises, or in lieu thereof reference to the successor's Form 27½ describing such premises, the number of each sheet comprising each plat and plan covered by such certificate, and a statement that the distillery premises, and the buildings, apparatus, and equipment thereon, are correctly described and depicted on such plat and plans.

(68A Stat. 631, 917; 26 U. S. C. 5178, 7805)

§ 221.262 *Sign.* The successor, if other than a fiduciary temporarily operating the distillery, must change the distillery sign to conform to the requirements of § 221.105.

(68A Stat. 632, 917; 26 U. S. C. 5180, 7805)

§ 221.263 *Materials and unfinished brandy.* If distilling materials and unfinished brandy are received by transfer from the predecessor, the successor must comply with the requirements of Subpart DD of this part.

(68A Stat. 632, 917; 26 U. S. C. 5191, 7805)

OTHER CHANGES IN PROPRIETORSHIP OR OF CONTROL

§ 221.264 *Changes in partnership.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, shall constitute a change in proprietorship. Likewise, except as provided in § 221.265 the death, bankruptcy or adjudicated insolvency of one or more of the partners results in a dissolution of the partnership and, consequently, a change in proprietorship. Where such a change in proprietorship of the distillery occurs, the successor must qualify in the same manner as the proprietor of a new distillery, except that the successor may adopt the plat and plans of the predecessor as provided in § 221.261.

§ 221.265 *Exemption occasioned by State laws.* Where under the laws of the particular State the partnership is not terminated on the death or insolvency of a partner, but continues until the liquidation of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to operate the distillery for such purpose under the prior qualification of the partnership, and the bond already on file will be considered sufficient: *Provided*, That a consent of surety wherein the surety and the surviving partner agree to remain liable on the bond is filed. If such surviving partner acquires the business upon the settlement of the partnership he must qualify in his own name from the date of acquisition and give a new bond on Form 30½. The same rule shall apply where there is more than one surviving partner.

(68A Stat. 681; 26 U. S. C. 5556)

§ 221.266 *Changes in stockholders, officers, and directors of corporation.* The sale or transfer of the capital stock of a corporation operating a distillery does not constitute a change in the proprietorship of the distillery. However, where the sale or transfer of capital stock results in a change in the control or management of the business, or where there is any change in the officers or directors, the distiller must give notice thereof, in triplicate, to the assistant regional commissioner within 10 days of such change. Mere changes in stockholders of corporations not constituting a change in control need not be so reported. The assistant regional commissioner must, in the case of changes in officers or directors, be furnished extracts, in triplicate, of the minutes of the meetings showing such changes.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.267 *Reincorporation.* Where a corporation operating a distillery is reorganized and a new charter or certificate of incorporation is secured, the new corporation must qualify in the same manner as a new proprietor of the distillery, except that the new corporation may adopt the plat and plans of the predecessor as provided in § 221.261.

CHANGES IN LOCATION, PREMISES AND EQUIPMENT

§ 221.268 *Change in location.* Where there is a change in the location of the distillery premises, the distiller must comply with all applicable provisions of Subpart D to H inclusive of this part except that in lieu of the filing of a new distiller's bond, Form 30½, the distiller may furnish a consent of surety, Form 1533, in accordance with § 221.197, extending the terms of the distiller's bond given for the former location to cover operation of the distillery at the new location.

(68A Stat. 628; 26 U. S. C. 5175)

§ 221.269 *Changes in premises.* Where the distillery premises are to be extended or curtailed, the distiller must file with the assistant regional commissioner an

amended notice, Form 27½, and an amended plat of the premises as extended or curtailed, except as herein specifically authorized in the case of alternate operations of the bottling department. If the plans are affected by the extension or curtailment, they must also be amended. The additional premises covered by an extension may not be used for distillery purposes, and the portion of the distillery premises to be excluded by a curtailment may not be used for other than distillery purposes, prior to approval of the notice, Form 27½. Where an internal revenue bonded warehouse containing a bottling-in-bond department is located on the distillery premises, and the documents required by Part 225 of this title, governing the alternate operation of the bottling house as a bottling-in-bond department and a tax-paid bottling house, are filed, and no change in proprietorship is involved, the filing of additional notices, Form 27½, covering changes in the temporary status thereof from time to time will not be required.

(68A Stat. 621, 623, 631, 643, 645; 26 U. S. C. 5171, 5175, 5178, 5231, 5243)

§ 221.270 *Changes in construction and use.* Where a change is to be made in the construction of a room or building not involving an extension or curtailment of the distillery premises, or where a change is to be made in the use of any portion of such premises, the distiller shall first secure approval thereof by the assistant regional commissioner pursuant to application, in triplicate, setting forth specifically the proposed changes. If the changes involve buildings which are to be demolished or altered in such a manner as to decrease the value of the property, the application shall include: (a) The date of original purchase; (b) the name and address of the vendor; (c) the original cost; and (d) the present book value and method used in determining such value. Upon approval of the application, the changes will be made under the supervision of an internal revenue officer, unless they are of such a nature as, in the opinion of the assistant regional commissioner, do not require such supervision. The completed changes will be reflected in the next amended or annual notice, Form 27½, and amended plans filed by the distiller, unless the assistant regional commissioner requires the immediate filing of an amended notice and amended plans. If the buildings to be demolished, or altered in such a manner as to decrease the value thereof, are on premises which have been eliminated from the distillery premises, a statement in writing, in triplicate, containing the data prescribed by items (a) through (d) of this section for such buildings shall be furnished the assistant regional commissioner.

(68A Stat. 623, 631, 617; 26 U. S. C. 5175, 5178, 7805)

§ 221.271 *Indemnity bond covering changes in buildings.* If buildings on the distillery premises, or on premises which have been eliminated from the distillery premises, are to be demolished

or altered in such manner as to decrease the value of the property, and a lien for taxes exists on such property under section 5004, I. R. C., the distiller must file with the assistant regional commissioner an indemnity bond, Form 1617, in triplicate, in a penal sum equal to the decrease in the value of the property: *Provided*, That, if such decrease in value is less than \$5,000, no indemnity bond will be required.

(68A Stat. 598; 26 U. S. C. 5004)

§ 221.272 *Appraisal.* The amount of the decrease in the value of the property subject to the Government's lien which will be caused by the demolition or alteration of buildings shall be determined by appraisal by two or more competent persons designated by the assistant regional commissioner. The appraisers shall render to the assistant regional commissioner a report, in duplicate, of their appraisal, which shall include information as to the methods employed by them in determining their valuations. The appraisal shall be at the expense of the distiller, unless made by internal revenue officers. The assistant regional commissioner may dispense with the formal appraisal when he has reason to believe that the value of the property concerned is less than \$5,000.

(68A Stat. 598; 26 U. S. C. 5004)

§ 221.273 *Changes in equipment.* Where changes are to be made in the distilling apparatus and equipment, the distiller shall first secure approval thereof by the assistant regional commissioner pursuant to application, in triplicate, setting forth specifically the proposed changes: *Provided*, That, emergency repairs including the temporary removal of equipment from the distillery premises and its return to its former location and use without substantial change or lessening of its value, may be made under the supervision of the internal revenue officer without prior approval of the assistant regional commissioner. If the distilling apparatus or equipment referred to in § 221.274 is to be removed, the distiller's application shall include information showing: (a) The date of original purchase; (b) the name and address of the vendor; (c) a description of the article, including model and serial numbers, if any; (d) original cost; (e) present book value and method used in determining such value; and (f) proposed disposition of the article. If the equipment is to be temporarily removed for repairs the application shall include (1) identification of the equipment, (2) the nature of the repairs to be made, (3) name and address of the place where repairs will be made, and (4) the approximate date of return. Where emergency repairs are made, the distiller shall file immediately a report thereof, in triplicate, with the assistant regional commissioner. Changes covered by an approved application will also be made under the supervision of the internal revenue officer. Upon completion of any change made under his supervision, the internal revenue officer will authorize the removal of the dismantled equipment, and the use of the new or repaired equipment, and submit a

report, in triplicate, of the changes to the assistant regional commissioner.

(68A Stat. 631; 26 U. S. C. 5178)

§ 221.274 *Indemnity bond covering removal of equipment.* If distilling apparatus or equipment on which a lien has attached under section 5004, I. R. C., for taxes on brandy produced which has not been taxpaid or withdrawn for a tax-free purpose, is to be removed from the distillery premises without adding property that will become a fixture in law of an equal or greater value than the apparatus or equipment to be removed, the distiller must file with the assistant regional commissioner an indemnity bond on Form 1617, in triplicate. Such bond must be in a penal sum equal to the value of the apparatus or equipment to be removed, or equal to the excess in value of the apparatus or equipment to be removed over the value of the property to be substituted therefor: *Provided*, That, if such value or difference in value, as the case may be, is less than \$5,000, no indemnity bond will be required: *And provided further*, That no indemnity bond will be required to cover the removal of equipment from the distillery bonded premises to another bonded premises, if the two premises are controlled by the same interests. The distiller must include in his application sufficient evidence to support a request for any waiver of indemnity bond requirements. The value of the distilling apparatus or equipment to be removed, or the difference between the value of such old apparatus or equipment and the value of the new property to be added will be determined in the manner prescribed in § 184.286.

(68A Stat. 598; 26 U. S. C. 5004)

§ 221.275 *Amended notice and plans covering changes in equipment.* Upon completion of changes in equipment which materially affect the accuracy of the Form 27½ or plans, the distiller must file an amended notice and amended plans. Where an amended notice and amended plans are not filed immediately upon completion of minor changes in equipment, such as general repairs, changes in pipelines, or the addition or removal of a tank, the distiller must include such changes in the next amended or annual notice, and amended plans to be filed by him. The assistant regional commissioner may, at any time, in his discretion, require the immediate filing of an amended notice and plans covering any change in equipment.

(68A Stat. 623, 631; 26 U. S. C. 5175, 5178)

CHANGE IN TITLE TO DISTILLERY PROPERTY OR THE ENCUMBRANCE THEREOF

§ 221.276 *Change of title.* Where the title to the lot or tract of land upon which the fruit distillery is located is changed by a sale, judicial or otherwise, or where there is any change in the ownership of the premises or the distilling apparatus or equipment, subsequent to approval of distiller's bond, Form 30½, the distiller is no longer qualified. If the distiller desires to qualify for further operation of the distillery when such a change occurs, he must file an amended

notice, Form 27½, together with the necessary consent, Form 1602, or, in lieu of such consent, an indemnity bond, Form 3-A. In addition to such amended notice and consent, Form 1602, or indemnity bond, Form 3-A, the assistant regional commissioner may, in his discretion, require the distiller to file a new distiller's bond, Form 30½.

(68A Stat. 628, 629, 680; 26 U. S. C. 5175, 5176, 5551)

§ 221.277 Encumbrance. If, subsequent to the approval of the distiller's bond, the lot or tract of land upon which the distillery is situated, or any part thereof, or any of the distilling apparatus or equipment becomes subject to, or encumbered by any mortgage, judgment, lien, or other encumbrance, the distiller must immediately file (a) an amended notice, Form 27½, (b) consent on Form 1602, or a proper indemnity bond, in lieu of such consent, and (c) a consent of surety on his present distiller's bond, or a new distiller's bond, in lieu of such consent.

(68A Stat. 628, 629, 680; 26 U. S. C. 5175, 5176, 5551)

SUBPART L—REQUIREMENTS GOVERNING OPERATION OF DISTILLERY UNDER ALTERNATING PROPRIETORSHIPS

QUALIFICATIONS FOR INITIAL ALTERNATING PROPRIETORSHIPS

§ 221.290 Where no bonded warehouse on premises. A fruit distillery may be operated under alternating proprietorships: *Provided*, That operation by each proprietor is for a period of twenty-four hours, or multiples thereof, concurrent with the calendar day. Where it is desired to operate a fruit distillery under alternating proprietorships and there is no internal revenue bonded warehouse on the distillery premises, the successor (lessee) distiller must qualify as proprietor of the distillery in accordance with the provisions of §§ 221.257-221.263. At the time a distiller first suspends operations preparatory to the operation of the fruit distillery by an alternate proprietor, he must discontinue operations and comply with the following requirements:

(a) *Amended notice, Form 27½.* File with the assistant regional commissioner an amended notice on Form 27½, in triplicate, stating thereon the purpose of the notice to be "Temporary discontinuance in order that the fruit distillery may be operated by an alternate proprietor" and give the date of discontinuance.

(b) *Consent of surety.* File a blanket consent of surety, Form 1533, in triplicate, to continue in effect bond, Form 30½, unless such bond already contains these provisions. Such blanket consent of surety may be filed to cover all such alternate operations and may be executed in the following form:

To continue in effect the said bond whenever operation of the fruit distillery is resumed from time to time, pursuant to application on Form 1696, filed by the principal following suspension of operations by an alternate proprietor.

(c) *Materials and unfinished brandy.* If distilling materials and unfinished

brandy are to be transferred to the successor, comply with the requirements of §§ 221.740, 221.741 and 221.743. Whenever the proprietorship is to be alternated after the first suspension, the procedure prescribed in §§ 221.292 and 221.293 will be followed.

(68A Stat. 628, 629, 630, 633; 26 U. S. C. 5175, 5176, 5177, 5193)

§ 221.291 Where bonded warehouse on premises. Where an internal revenue bonded warehouse is located on the fruit distillery premises, the proprietorship of the distillery may be alternated in accordance with the requirements of § 221.290. In addition, the outgoing (lessor) distiller shall designate the plat on file which depicts the entire distillery premises, including the internal revenue bonded warehouse, as "Plat A" and file a new plat which will be designated "Plat B" depicting the internal revenue bonded warehouse and any other portion of the distillery premises not to be operated by the lessee as a portion of the distillery. He shall also describe in the amended notice, Form 27½, the bonded warehouse and any portion of the distillery premises not to be operated as a part of the fruit distillery. The description thereof must correspond with the depiction of the premises on Plat B. Whenever the proprietorship is to be alternated after the first suspension, the procedure prescribed by §§ 221.292 and 221.293 will be followed.

(68A Stat. 628, 629, 631; 26 U. S. C. 5175, 5176, 5178)

SUSPENSION FOR SUBSEQUENT ALTERNATE PROPRIETORSHIPS

§ 221.292 Requirements. Where an alternate proprietor desires to suspend operations of the fruit distillery preparatory to resumption by another alternate proprietor, he must comply with the following requirements:

(a) *Notice of alternate operations.* File Form 1696, with the storekeeper-gauger in charge giving notice of intention to suspend operations. The form shall be executed and filed in accordance with the various lines on the form and the instructions printed thereon or issued in respect thereto. Form 1696 shall contain or be verified by a written declaration that it is executed under the penalties of perjury. Operations will be suspended pursuant to approval of the notice by the storekeeper-gauger in charge.

(b) *Materials and unfinished brandy.* If distilling materials and unfinished brandy are to be transferred to the successor, the procedure prescribed by §§ 221.740, 221.741 and 221.743 must be followed except that Form 1614 will be filed with the storekeeper-gauger in charge.

(68A Stat. 628, 632, 749; 26 U. S. C. 5175, 5191, 6065)

RESUMPTION FOR SUBSEQUENT ALTERNATE PROPRIETORSHIPS

§ 221.293 Requirements. Where an alternate proprietor desires to resume operation of the fruit distillery following suspension by another alternate proprietor, he must comply with the following requirements:

(a) *Notice of alternate operations.* File Form 1696, with the storekeeper-gauger in charge for authority to resume operations. The notice shall be executed in accordance with the instructions printed on the form, and otherwise completed as provided in § 221.292.

(b) *Materials and unfinished brandy.* If distilling materials and unfinished brandy are to be received from the predecessor, the procedure prescribed by §§ 221.740, 221.741 and 221.743 will be followed, except that Form 1614 will be filed with the storekeeper-gauger in charge.

(68A Stat. 628, 632, 749; 26 U. S. C. 5175, 5191, 6065)

ACTION BY STOREKEEPER-GAUGER IN CHARGE

§ 221.294 Approval and disposition of Form 1696. Upon receipt of Form 1696, and accompanying Form 1614, if any, the storekeeper-gauger in charge will, if he finds that basic authority for the operation has been previously granted by the assistant regional commissioner and that the notice may properly be approved, execute his certificate of approval on all copies, and dispose of the copies in accordance with the instructions printed on the form or issued in respect thereto.

(68A Stat. 681; 26 U. S. C. 5556)

SUBPART M—REQUIREMENTS GOVERNING ALTERNATE OPERATIONS AS REGISTERED DISTILLERY OR INDUSTRIAL ALCOHOL PLANT

QUALIFICATIONS FOR INITIAL ALTERNATING OPERATIONS

§ 221.300 Where no bonded warehouse on premises. A fruit distillery may be operated alternately for the production of brandy under this part, the production of spirits under part 220 of this title or the production of alcohol under part 182 of this title: *Provided*, That operation as a fruit distillery, registered distillery, or alcohol plant is for a period of twenty-four hours, or multiples thereof, concurrent with the calendar day. Where it is desired to conduct alternating operations at a fruit distillery and there is no internal revenue bonded warehouse located on the distillery premises, the successor (incoming) proprietor must first qualify as proprietor of the premises. At the time of the first suspension for the purpose of conducting alternate operations, the outgoing distiller must discontinue operations and comply with the following requirements:

(a) *Amended notice, Form 27½.* File with the assistant regional commissioner an amended notice on Form 27½, in triplicate, stating thereon the purpose of the notice to be "Temporary discontinuance in order that the fruit distillery may be operated as a registered distillery" (or industrial alcohol plant), and give the date of discontinuance.

(b) *Consent of surety.* File with the assistant regional commissioner a blanket consent of surety, Form 1533, in triplicate, to continue in effect bond, Form 30½, unless such bond already contains these provisions. Such blanket consent of surety may be filed to cover all such alternate operations and may be

executed in the following form: To continue in effect the said bond whenever operation of the distillery is resumed from time to time, pursuant to application on Form 1696, filed by the principal following suspension of operations as an industrial alcohol plant or registered distillery.

(c) *Materials, heads and tails and unfinished brandy.* If distilling materials are transferred to the successor or if heads and tails or unfinished brandy are to be retained on the premises pending the resumption of operations as a fruit distillery, comply with the requirements of §§ 221.722-221.725. Whenever alternate operations are to be conducted after the first suspension, the procedure prescribed by §§ 221.302 and 221.303 will be followed.

(68A Stat. 628, 629, 630, 633; 26 U. S. C. 5175, 5176, 5177, 5193)

§ 221.301 *Where bonded warehouse on premises.* Where an internal revenue bonded warehouse is located on the fruit distillery premises, the distillery may be operated alternately as a fruit distillery, a registered distillery or an industrial alcohol plant upon compliance with the requirements of § 221.300. The distiller shall designate the plat on file which depicts the entire distillery premises, including the internal revenue bonded warehouse, as "Plat A," and file a new plat which will be designated as "Plat B," depicting the internal revenue bonded warehouse and any other portion of the distillery premises not to be operated by the incoming alternate proprietor. The outgoing distiller shall also describe in the amended notice, Form 27½, the bonded warehouse and any portion of the distillery premises not to be operated by the incoming proprietor. The description thereof must correspond with the depiction of the premises on Plat B. Whenever alternate operations are to be conducted after the first suspension, the procedure prescribed by §§ 221.302 and 221.303 will be followed.

(68A Stat. 628, 629, 630, 633; 26 U. S. C. 5175, 5176, 5177, 5193)

SUSPENSION FOR SUBSEQUENT ALTERNATE OPERATIONS

§ 221.302 *Requirements.* Where a distiller desires to suspend operations of the fruit distillery preparatory to resumption of operations as a registered distillery or industrial alcohol plant, he must comply with the following requirements:

(a) *Notice of alternate operations.* File Form 1696 with the storekeeper-gauger in charge giving notice of intention to suspend operations. The form shall be executed and filed in accordance with the various lines on the form and the instructions printed thereon or issued in respect thereto. Form 1696 shall contain or be verified by a written declaration that it is executed under the penalties of perjury. Operations will be suspended pursuant to approval of the notice by the storekeeper-gauger in charge.

(b) *Materials, heads and tails, and unfinished brandy.* If distilling materials are transferred to the successor or if heads and tails or unfinished brandy are

to be retained on the premises pending the resumption of operations as a fruit distillery, comply with the requirements of §§ 221.722-221.725.

(68A Stat. 628, 632, 633, 749; 26 U. S. C. 5175, 5191, 5193, 6065)

RESUMPTION FOR SUBSEQUENT ALTERNATE OPERATIONS

§ 221.303 *Requirements.* Where a distiller desires to resume operation of the fruit distillery following suspension of operations as an industrial alcohol plant or registered distillery, he must comply with the following requirements:

(a) *Notice of alternate operations.* File Form 1696 with the storekeeper-gauger in charge for authority to resume operations. The notice shall be executed in accordance with the instructions printed on the form or issued in respect thereto and otherwise completed as provided in § 221.302.

(b) *Materials.* If distilling materials are received by transfer from the predecessor, comply with the requirements of §§ 221.724 and 221.725.

(68A Stat. 629, 632; 26 U. S. C. 5175, 5191)

ACTION BY STOREKEEPER-GAUGER IN CHARGE

§ 221.304 *Approval and disposition of Form 1696.* Upon receipt of Form 1696, and accompanying Form 1614, if any, the storekeeper-gauger in charge will, if he finds that basic authority for the operation has been previously granted by the assistant regional commissioner, and that the notice may be properly approved, execute his certificate of approval on all copies, and dispose of the copies in accordance with the instructions printed on the form or issued in respect thereto.

(68A Stat. 681; 26 U. S. C. 5556)

SUBPART N—ACTION BY ASSISTANT REGIONAL COMMISSIONER

ORIGINAL ESTABLISHMENT

§ 221.310 *Authority to approve.* Assistant regional commissioners are authorized to approve all notices, bonds, consents of surety, and other qualifying documents required by this part.

§ 221.311 *Indemnity bond application.* Where an application for permission to file an indemnity bond in lieu of the written consent of the owner of the distillery premises or apparatus or equipment, or of any mortgagee, judgment-creditor, conditional sales vendor, or other person having a lien thereon, is submitted by the distiller and such application conforms to the requirements of this part, the assistant regional commissioner will cause an investigation to be made of the facts upon which the application is based, and will designate two or more competent persons to make an appraisal of the value of the lot or tract of land on which the distillery is situated, the distillery, the buildings, and the distilling apparatus. The appraisal shall be made as provided in § 221.167. If the assistant regional commissioner finds, upon consideration of the appraisal and reports of investigation, that under the law and this part an indemnity bond may properly be accepted in lieu

of the consent of the owner or lienor, and if he is satisfied that the valuation placed upon the distillery property by the appraisers is fair, he will note his approval on all copies of the application. He will then return one copy of the approved application to the applicant and retain the original for his files. He will forward the remaining copy of the application and copies of the reports of investigation and appraisal to the Director, Alcohol and Tobacco Tax Division, at the time of forwarding the indemnity bond. If the application is disapproved, the assistant regional commissioner will note his disapproval thereon and will return all copies of such application to the applicant with a statement of the reasons for disapproval.

(68A Stat. 630; 26 U. S. C. 5177)

§ 221.312 *Examination of other qualifying documents.* Upon receipt of notice, plat, plans, bond, consent (Form 1602) if any, or indemnity bond in lieu thereof, and other documents required by this part of persons intending to qualify as distillers, the assistant regional commissioner will examine the same to determine whether they have been properly executed, and whether they reflect compliance with the requirements of the law and this part. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not reflect compliance with this part, action thereon will be held in abeyance until the omission, or error, or discrepancy has been rectified, and there has been full compliance with all requirements.

§ 221.313 *Inspection of premises.* When the required documents have been filed in proper form, the assistant regional commissioner will assign an inspector to examine the premises, buildings, apparatus, and equipment, and determine whether they conform with the description thereof in the notice, plat and plans, and special applications, if any, and whether the construction and measures of protection afforded meet the requirements of the law and this part. The inspector will observe particularly the manner in which the rooms or buildings on the premises are separated from each other and from other premises, means of communication, ingress and egress, adequacy of protection afforded windows, doors, and other openings, construction of apparatus and equipment, and the suitability of the Government office and facilities. The inspector will also make careful inquiry respecting the applicant's title to, or interest in, the lot or tract of land, the distillery, and the apparatus and equipment, in order to determine whether proper consents on Form 1602 of the owner and of any mortgagees, judgment-creditors, lienors, other encumbrancers, conditional sales vendors, or prior lessees, have been procured and submitted by the applicant. The inspector will examine the records in the office of the recorder of deeds or other office where titles and matters affecting titles are filed to verify the statements of the applicant respecting his title to,

or interest in, the property. The inspector should require the applicant to submit for examination invoices, bills of sale, conditional sales contracts, leases, or other commercial papers for verification of the statements made on Form 27½ respecting his title to, or interest in, the apparatus and equipment. Where the inspection discloses minor irregularities in the qualifying documents or in the construction, the inspector will, at the time of their discovery, direct the attention of the applicant to the same in order that the applicant may correct the defects before completion of the inspection. Upon completion of the inspection, a report thereof will be submitted to the assistant regional commissioner.

§ 221.314 *Report of inspection.* The report of the inspection shall describe separately all irregularities and discrepancies found during the course of the inspection, and shall include a complete statement describing all unusual or special conditions. Where irregularities were corrected during the inspection, the report will indicate the corrections so made. The report need not set out in detail each description as set forth in the notice, plat, and plans. The description of buildings and equipment in the report should be general and brief. However, construction, equipment, signs, etc., which are not in conformity with law and this part, will be completely described. If there are any pipelines or other connections or openings between the bonded premises and other premises, the same shall be described in detail. There shall be further embodied in the report a statement as to whether or not another business is being conducted, or is intended to be conducted, on the bonded premises or in buildings thereon.

§ 221.315 *Law violation record.* Before approving any bond or consent of surety given by any individual, firm, partnership, corporation, or association, in respect to the business of a fruit distiller, the assistant regional commissioner will cause such inquiry or investigation as may be deemed necessary to ascertain whether such individual, firm, partnership, corporation, or association, or any person owning, controlling, or actively participating in the management of the business has been convicted of, or has compromised, an offense of the nature specified in § 221.200. Where record is found of the conviction or the compromise of such an offense, the assistant regional commissioner may disapprove the bond or consent upon the basis of his findings: *Provided*, That if the bond or consent is disapproved, the principal may appeal the assistant regional commissioner's action to the Director, Alcohol and Tobacco Tax Division. Where an appeal is taken to the Director, Alcohol and Tobacco Tax Division, the assistant regional commissioner will furnish the Director, Alcohol and Tobacco Tax Division with full information respecting the reasons for disapproval including the nature and place of the offense, and the names of the offenders and the date of conviction or acceptance of an offer in compromise.

(68A Stat. 680; 26 U. S. C. 5551)

§ 221.316 *Approval of qualifying documents.* If the assistant regional commissioner finds, upon examination of the inspection report and the qualifying documents, that the person seeking to qualify as a fruit distiller has complied in all respects with the requirements of law and this part, and if the distiller's bond (Form 30½) and the consent (Form 1602), if any, or the indemnity bond filed in lieu thereof may properly be approved under § 221.315, and if the applicant is entitled to a permit, he will assign a registry number to the fruit distillery in accordance with § 221.317, note his approval on all copies of the distiller's bond, consent or indemnity bond, notice, and plat and plans, and shall dispose of the qualifying documents and inspectors' reports in accordance with § 221.319. The issuance of a permit under the Federal Alcohol Administration Act should be withheld pending approval of the notice, bond, and other qualifying documents required by the internal revenue laws and this part.

§ 221.317 *Registry numbers.* Fruit distilleries will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new distilleries will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued distilleries will not be reassigned to other distilleries. In the case of a successor taking over the distillery, the same registry number will be retained. In the case of a change in location of the distillery within the same State, the same registry number may be retained.

§ 221.318 *Disapproval of qualifying documents.* If the assistant regional commissioner finds that the applicant has not complied in all respects with the requirements of the law and this part, or that the situation of the distillery is such as would enable the applicant to defraud the United States or that the bond should be disapproved under § 221.315, he will note his disapproval on the notice, Form 27½, and will dispose of the qualifying documents in accordance with § 221.319.

§ 221.319 *Disposition of qualifying documents.* Where the assistant regional commissioner approves the qualifying documents, he will forward to the applicant one copy of the documents with the original of the basic permit issued under the Federal Alcohol Administration Act, forward to the Director, Alcohol and Tobacco Tax Division, one copy of each of the qualifying documents (except bonds given with corporate surety which will be forwarded to the Commissioner of Accounts) and a copy of the basic permit issued under the Federal Alcohol Administration Act, together with copies of inspection reports, and retain the originals of the qualifying documents for the file of the applicant. The remaining copy of the statement of process will be forwarded to the storekeeper-gauger in charge. If the qualifying documents are disapproved, the assistant regional commissioner shall return to the appli-

cant one copy of the disapproved notice together with all copies of the qualifying documents, and all copies of the bond without action thereon. The assistant regional commissioner shall forward one copy of the disapproved notice to the Director, Alcohol and Tobacco Tax Division, and will advise him fully respecting the disapproval thereof. He shall retain the remaining papers in his files. If the applicant is not entitled to a basic permit, the assistant regional commissioner will, upon disapproval of the application therefor, return all copies of the qualifying documents to the applicant without action thereon.

CHANGES SUBSEQUENT TO ORIGINAL ESTABLISHMENT

§ 221.320 *Procedure applicable.* The provisions of §§ 221.311-221.319 respecting the action required of assistant regional commissioners in connection with the original establishment of distilleries will be followed to the extent applicable, where there is a change in the individual, firm, or corporate name of the distiller, or in the trade name or style or where the distillery is to be operated initially under a trade name or style or where there is a change in the proprietorship, location, premises, construction, apparatus and equipment of the distillery, or in the type of plant, or in the title to the distillery property, or where such property becomes subject to a mortgage, judgment, lien, or other encumbrance or where operations are permanently discontinued.

§ 221.321 *Indemnity bond, Form 1617.* Where changes to be made in distillery buildings or former distillery buildings or distillery equipment are such as to require the filing of an indemnity bond on Form 1617, as provided in §§ 221.271 and 221.274, the assistant regional commissioner will, upon receipt of a satisfactory bond, note his approval thereon, retain the original and forward one copy to the Commissioner of Accounts and one copy to the distiller.

§ 221.322 *Applications and reports covering changes.* Where an application covering changes in the distilling apparatus or equipment, or in the construction or use of a room or building, is authorized by the assistant regional commissioner, he will, after completion of the change, retain one copy of the application and forward one copy to the distiller and one copy to the storekeeper-gauger in charge at the distillery. Similar disposition will be made of reports received from the distiller covering emergency repairs of distilling apparatus and equipment.

ANNUAL NOTICES AND BONDS, CONSENTS OF SURETY, AND ADDITIONAL AND SUPERSEDING BONDS

§ 221.323 *Procedure applicable.* The procedure prescribed in this subpart for the approval and disapproval of notices and bonds submitted in connection with the establishment of fruit distilleries will, to the extent applicable, govern the approval and disapproval of annual notices, consents (Form 1602), and bonds, consents of surety, and additional and superseding bonds.

SUBPART O—TERMINATION OF BONDS

§ 221.335 *Termination of distiller's bond.* The fruit distiller's bond (Form 30½) is an annual bond and, therefore, upon expiration of the period for which it is given automatically terminates as to spirits produced subsequent to such period. Such bonds may be terminated as to future production prior to expiration of the period for which given, (a) pursuant to application by the surety as provided in § 221.339, or (b) upon approval of a superseding bond or discontinuance of business by the principal. (68A Stat. 629; 26 U. S. C. 5176)

§ 221.336 *Termination of indemnity bond, Form 3-A.* Indemnity bonds (Form 3-A) given in lieu of the consent of the owner of the distillery premises or property and of any mortgagee, judgment-creditor, lienor, encumbrancer, conditional sales vendor, etc., to priority of the Government's lien for taxes and penalties and other interests, run for an indefinite period. Such bonds may be terminated as to liability for future operations of the distillery, (a) pursuant to application by the surety as provided in § 221.339, (b) upon approval of a superseding bond or discontinuance of business by the principal, (c) if the distiller (1) becomes the owner in fee unencumbered of the property covered by the bond or (2) files the consent of the owner or encumbrancer to priority of the Government's lien for taxes and penalties and other interests (as provided in § 221.159), or (d) if all spirits produced while such indemnity bond was in force are taxpaid or removed for lawful tax-free purposes. Application for notice of termination of such bonds under conditions (c) and (d) of this section must be filed in duplicate with the assistant regional commissioner.

(68A Stat. 629, 630; 26 U. S. C. 5176, 5177)

§ 221.337 *Termination of indemnity bonds, Form 1617.* Indemnity bonds (Form 1617) given in connection with changes in buildings and equipment on which a lien had attached under section 5004, I. R. C., may be terminated (a) upon approval of a superseding bond, or (b) upon taxpayment or removal for a lawful tax-free purpose of all spirits produced while the property covering which the indemnity bond was filed formed a part of the distillery premises and equipment. Application for notice of termination of such bonds under condition (b) of this section must be filed in duplicate with the assistant regional commissioner.

(68A Stat. 598; 26 U. S. C. 5004)

§ 221.338 *Termination of export bonds.* Bonds (Forms 547, 548, 657, and 658) given to cover the exportation, or the transportation for export, of brandy withdrawn from the distillery in tank cars for such purpose as provided in Subpart V of this part, will be terminated in accordance with the provisions set forth in Part 225 of this title for the termination of such bonds when given to cover the exportation, or the transportation for export, of spirits with-

drawn from internal revenue bonded warehouses.

(68A Stat. 634, 647; 26 U. S. C. 5194, 5247)

§ 221.339 *Application of surety for relief from bond.* A surety on any bond required by this part may at any time in writing notify the principal and the assistant regional commissioner in whose office the bond is on file, that he desires after a date named, which shall be at least 60 days after the date of notification, to be relieved of liability under said bond. The notice shall be executed in triplicate by the surety, who shall deliver one copy to the principal and the other two copies to the assistant regional commissioner, who will retain one copy and transmit the remaining copy to the Director, Alcohol and Tobacco Tax Division. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved (a) in the case of a distiller's bond (Form 30½) from liability for brandy produced wholly subsequent to the date named in the notice, (b) in the case of indemnity bonds (Form 3-A) from liability for operations of the distillery wholly subsequent to such date, and (c) in the case of export bonds (Forms 547, 548, 657, and 658) from liability for brandy withdrawn for export wholly subsequent to such date. This notice may not be given by an agent of the surety unless it is accompanied by a power of attorney, duly executed by the surety, authorizing him to give such notice, or by a verified statement that such power of attorney is on file with the Department. The surety must also file with the assistant regional commissioner an acknowledgement or other proof of service of such notice on the principal.

§ 221.340 *Action to terminate distiller's bond.* When a superseding distiller's bond has been approved, or the principal has discontinued business, as provided in § 221.335, the assistant regional commissioner will make a complete examination of records to determine whether there is any liability then due and payable outstanding against the bond. He will also ascertain from the district director of internal revenue whether there are any outstanding, unpaid assessments or demands for taxes on spirits produced under the bond. If it is found that violations of law or regulations occurred during the period covered by the bond and that penalties incurred on fines imposed have not been paid, or that outstanding assessments, or demands for payment of taxes, chargeable against the bond, have not been paid or otherwise settled, the assistant regional commissioner will disapprove the application, unless the liability is settled. If the assistant regional commissioner finds that the fruit distiller's bond may properly be terminated, he will issue notice of termination thereof in accordance with § 221.342.

§ 221.341 *Action to terminate indemnity bond.* When an application for notice of termination of an indemnity bond (Form 3-A), as to future operations

of a fruit distillery, is filed with the assistant regional commissioner or where a superseding bond has been approved, or the principal has discontinued business as provided in §§ 221.336-221.337, the assistant regional commissioner will take action in accordance with the procedure prescribed in § 221.340, in the case of termination of a fruit distiller's bond. When an application for notice of termination of an indemnity bond (Form 1617) covering changes in buildings or equipment is filed with the assistant regional commissioner, he will make a complete inquiry to determine whether the lien in relation to which the bond was given, have been tax-paid or removed for a lawful tax-free purpose. If the assistant regional commissioner finds that the bond may properly be terminated, he will issue notice of termination thereof, in accordance with § 221.342.

§ 221.342 *Notice of termination.* When the assistant regional commissioner has determined that a fruit distiller's bond (Form 30½) may be terminated as to liability for future production, or an indemnity bond (Form 3-A or 1617) may be terminated as to future liability, he will execute Form 1490, where a superseding bond has been approved, or Form 1491, where the principal has discontinued business, in quadruplicate (in quintuplicate if there are two sureties), and will forward a copy together with one copy of the application, if any, to the Director, Alcohol and Tobacco Tax Division, one copy to each obligor on the bond, and retain one copy on file with the bond to which it relates.

§ 221.343 *Release of collateral.* The release of collateral pledged and deposited with the United States to support bonds required by this part will be in accordance with the provisions of Department Circular No. 154, revised (31 CFR Part 225), subject to the conditions governing the issuance of notices on Forms 1490 and 1491 of the termination of such bonds. Upon approval of an application for the issuance of notice of the termination of a distiller's bond, Form 30½, or indemnity bond, Form 3-A or 1617, supported by collateral security, the assistant regional commissioner will fix the date or dates on which a part or all of the security may be released. In fixing such date, which ordinarily will be not less than six months from the date of determination that there is no outstanding liability against the bond, the assistant regional commissioner will satisfy himself that the interest of the Government will not be jeopardized. Collateral pledged and deposited to support any such bond will not be released by the assistant regional commissioner until liability under the bond has been terminated. At any time prior to the release of such collateral security, the assistant regional commissioner may, in his discretion, and for proper cause, further extend the date of release of the security for such additional length of time as in his judgment may be appropriate. Collateral pledged and deposited to support a fruit distiller's bond (Form 30½) or an indemnity bond (Form 3-A) will not be released by the assistant regional com-

missioner until all spirits produced while such bonds were in force and effect have been taxpaid or removed for a lawful tax-free purpose. Accordingly collateral may not be released while spirits produced under such bonds remain in any internal revenue bonded warehouse. When an application for release of collateral deposited in support of a fruit distiller's bond (Form 30½) or an indemnity bond (Form 3-A) is received by the assistant regional commissioner, he will determine whether all spirits produced at the distillery while the bond was in effect have been withdrawn from warehouses and all outstanding liabilities settled, prior to taking action upon the application. Collateral pledged and deposited to support an indemnity bond (Form 1617) covering changes in buildings and equipment may be released by the assistant regional commissioner upon approval of a superseding bond or upon tax payment or removal for a lawful tax-free purpose of all spirits the tax on which constituted the lien in relation to which the bond was given. Collateral pledged and deposited to support direct export bonds, or transportation for export bonds will ordinarily be released by the assistant regional commissioner upon issuance of notice of release of the bond, Form 1491.

(40 Stat. 1148, as amended, 6 U. S. C. 15)

SUBPART P—MANUFACTURE OF BRANDY

KINDS OF MATERIALS AND BRANDIES

§ 221.350 *Kinds of materials.* Distillers operating under the provisions of this part must manufacture brandy (with or without the use of water to facilitate extraction and distillation) exclusively from fresh or dried fruits or their residues, or the wine or wine residues therefrom, or, where sugar has been used in the production of natural wine, such wine or wine residues therefrom, if the unfermented sugars are not re-fermented.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.351 *Wine spirits for use in wine production.* Wine spirits that may be produced for use in wine production are brandies made exclusively from materials specified in § 221.350, but such brandy shall not be reduced with water from distillation proof, nor be distilled at less than 140 degrees proof.

(68A Stat. 640, 667; 26 U. S. C. 5215, 5373)

COMMENCEMENT OF OPERATIONS

§ 221.352 *Notice, Form 125.* Before commencing operations at the distillery, the distiller shall file with the assistant regional commissioner notice on Form 125, in duplicate, specifying the date on which he desires to commence operations. This notice must be filed in time to enable the assistant regional commissioner to assign a storekeeper-gauger to apply the required locks and seals, or, in the case of a previously operated distillery, to remove Government locks from the furnace doors of the stills or from valves controlling the flow of steam or fuel to the stills, and to connect the machinery, and, if deemed necessary, to supervise operations. If the distiller's bond, Form 30½, has been approved and

the storekeeper-gauger has found the plant and equipment in proper condition, the distiller may commence operations at the time specified in the notice. Form 125 will not be required when operations are resumed pursuant to the filing of Form 1696.

(68A Stat. 632, 917; 26 U. S. C. 5191, 7805)

§ 221.353 *Assignment of storekeeper-gaugers.* Except as provided in § 221.371 the constant presence of storekeeper-gaugers at fruit distilleries will not be required. The assistant regional commissioner may, however, where the extent of operations or other circumstances warrant, assign one or more storekeeper-gaugers to constant duty at such distilleries. Where new distilleries are established, storekeeper-gaugers should be assigned to constant duty thereat for a limited period. Ordinarily, storekeeper-gaugers will be assigned to visit fruit distilleries at intervals for the purpose of gauging and supervising the withdrawal of brandy. At distilleries where operations are not such as to require the daily attendance of a storekeeper-gauger, the assistant regional commissioner will assign an officer to visit the distillery not more often than twice a month to gauge the brandy and supervise the redistillation of singlings: *Provided*, That the assistant regional commissioner may assign an officer to visit the distillery at more frequent intervals for such purposes where the location of the distillery is such that he can do so without undue expense to the Government, or where the quantity of brandy produced is such as to make the retention of 15 days' production in the receiving and singlings tanks inadvisable. As provided in § 221.127, the receiving and singlings tanks shall be of sufficient capacity to permit storekeeper-gaugers to be so assigned. When notices of commencement of operations are received, the assistant regional commissioner will assign storekeeper-gaugers in time to prevent unnecessary delays to distillers.

(68A Stat. 633, 640; 26 U. S. C. 5192, 5215)

§ 221.354 *Examination of distillery.* Upon arrival at a distillery intending to commence operations, storekeeper-gaugers will, prior to the actual commencement of operations, examine the distillery, the apparatus and equipment, the receiving tanks, etc., and determine that all valves, flanges, and other connections which would afford access to spirits are properly equipped for locking or are brazed, welded, or otherwise secured, and that all doors and other openings in the receiving and brandy deposit rooms, if any, are protected in the manner prescribed by this part. The storekeeper-gauger will apply Government locks wherever the same are required, and will complete Form 125, in duplicate, deliver one copy to the distiller, and forward the original to the assistant regional commissioner.

DISTILLING MATERIALS

§ 221.355 *Weighing materials received.* Distillers will weigh, or, in the case of liquids, weigh or measure, all materials received on the distillery premises for use in the production of brandy. Where wine is received by pipeline, or in tanks,

tank trucks, or tank cars, the material must be run into a measuring tank, measured as to quantity and tested as to alcoholic content, except that where the wine used as distilling material is received from a bonded wine cellar operated by the distiller on contiguous premises, and such wine is measured and tested in distilling material measuring tanks installed on the bonded wine cellar premises, it need not be again measured and tested on the distillery premises if it is to be immediately distilled. In such case, the wine must be conveyed by pipeline direct from the measuring tanks on the bonded wine cellar premises to the chargers of the stills, or to sumps from which it will be immediately pumped into the chargers. The distilling material measuring tanks may, as provided in § 221.92, be located on such contiguous bonded wine cellar premises where all distilling material used is procured therefrom. Any properly calibrated tank on the bonded wine cellar premises may be used as a distilling material measuring tank.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.356 *Remeasurement of wine.* Where wine is not to be distilled immediately upon receipt, it may be transferred to distilling material storage tanks, but when used it must be again tested as to alcoholic content and unless the quantity used is accurately measured by the chargers of the stills, it must be transferred to a measuring tank and the quantity correctly determined.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.357 *Record of materials received.* The distiller shall enter all materials received on the distillery premises for the production of brandy on Form 15. Where wine, or brandy for redistillation, is received the alcoholic content thereof will also be entered on the form. If champagne or other sparkling wine, or artificially carbonated wine, is received for use as distilling material, the entry of receipt will include information as to the kind of wine. Where wine or distilling material is received in bond from a bonded wine cellar for distillation, the distiller will complete Form 703, prepared by the consignor, in accordance with the instructions on the form.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.358 *Addition of water.* The distiller may add as much water as he may desire to wine for the purpose of economical distillation. Water must not be added to wine received, prior to determination of the alcoholic content. Where water is added to wine intended for use as distilling material after it is transferred to distillery measuring tanks located on contiguous bonded wine cellar premises operated by the distiller, the quantity and alcoholic content of such wine will be determined by the distiller after the addition of the water and so entered on Form 15. Unless the attenuated material is immediately distilled, it must be again tested as to alcoholic strength before distillation, as provided in § 221.362.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.359 *Nonfermentable materials.* No nonfermentable materials may be added to the wine or other distilling material for the purpose of providing yeast food, or for inhibiting the action of wild yeast or bacteria, or for any other purpose, unless the use of such materials is covered by the statement of process, as provided in § 221.180. No chemicals or other materials, such as essences, flavors, coloring matter, etc., which are volatile and would remain incorporated in the brandy when the manufacture thereof is complete may be added to the wine or other distilling material, or to the spirits at any stage of production, except as otherwise provided in this part.

(68A Stat. 607; 26 U. S. C. 5025)

§ 221.360 *Materials crushed for fermenting.* The distiller will weigh all materials crushed for fermenting, and will enter the same on Form 15. The quantity of fermented material produced will also be determined and entered on the form.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.361 *Verification of quantity and alcoholic content of materials received.* Where a storekeeper-gauger is assigned to the distillery, he will from time to time personally verify the accuracy of the distiller's determination of the quantity and alcoholic content of wine received for use as distilling material and the weight or quantity of other materials received and used for producing distilling material. Where no officer is in daily attendance at the distillery, the assistant regional commissioner will cause the accuracy of the distiller's entries on Form 15 to be verified by internal revenue officers from time to time.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.362 *Distilling material tested and measured before use.* The distiller will provide an approved ebulliometer, small still, or other suitable instrument for determining the alcoholic content of distilling material. The following ebulliometers have been approved by the Director, Alcohol and Tobacco Tax Division, for such use: Arnaldo-Sala (with shield), Braun, Juerst, L'Ebulliometer Levesque (with shield), Lefco, Malligand Type (with shield), Salleron-Dujardin, "TAG" (with shield), and E. B. Torino (with shield). The Arnaldo-Sala, L'Ebulliometer Levesque, Malligand Type, "TAG," and E. B. Torino have been approved subject to the condition that they will be used in connection with a shield to protect them from drafts or air currents. The Director, Alcohol and Tobacco Tax Division, may authorize the use of other equally accurate instruments for determining the alcoholic content of distilling material. Such instruments shall be made available for use by internal revenue officers for verifying the distiller's tests, as hereinafter required. Assistant regional commissioners will cause the accuracy of such instruments in use at distilleries to be checked from time to time. When using such instruments distillers and internal revenue officers must follow closely the instructions furnished therewith, in or-

der that accurate determinations may be made. The distiller shall determine the alcoholic content of each lot of distilling material by means of such an approved ebulliometer or other instrument, immediately prior to distillation, and shall at such time also determine accurately, by means of the distilling material measuring tanks, the number of gallons of distilling material to be distilled. The kind, quantity, and alcoholic content of the material distilled will be entered by the distiller on Form 15. The distiller will also compute and enter on Form 15 the calculated yield for each lot of material distilled.

(68A Stat. 637, 639; 26 U. S. C. 5197, 5212)

§ 221.363 *Verification of distiller's tests.* Where a storekeeper-gauger is on duty at the distillery, he will verify the distiller's tests of the distilling material and will see that the proper quantity of such material and the correct percentage of alcohol contained therein are entered on Form 15. Where no officer is in daily attendance at the distillery, the assistant regional commissioner will cause such tests of the distilling material to be made from time to time by internal revenue officers as may be necessary to insure accurate reporting of the item.

§ 221.364 *Qualification prerequisite to operation.* No wine, or brandy for redistillation, may be received or materials fermented or brandy produced on the distillery premises until proper bond and other required qualifying documents have been filed and approved.

(68A Stat. 627; 26 U. S. C. 5172)

DISTILLATION

§ 221.365 *Continuous process required.* The process of distillation employed must be such that the brandy will pass through continuous, closed stills, pipes, and vessels from the time the vapors rise in the first still until the finished brandy is deposited in locked receiving tanks provided for that purpose. The distiller may, in the course of manufacture, carry his product through as many distilling operations as he may desire, provided the process is closed and continuous. Distilling processes are deemed to be continuous where the brandy is carried through the various steps from the beer still to the receiving tanks as expeditiously as normal, efficient plant operation will permit in the manufacture of a finished product of standard quality. The collection of high and low wines (heads and tails) for the purpose of redistillation is not deemed to be a break in the continuity of the distilling process, but such brandy, when so collected, should be redistilled promptly when a sufficient quantity has been accumulated to permit efficient redistillation. Where brandy is percolated through oak chips or otherwise treated before deposit in the receiving tanks, the retention of the brandy in tanks temporarily, pending such treatment, is permissible, but no larger quantities of brandy may be so held than is necessary for operation of the percolators. The distilling process is held to be completed

when the brandy is deposited in the receiving tanks.

(68A Stat. 607, 634, 640; 26 U. S. C. 5025, 5194, 5215)

§ 221.366 *Continuous distillation.* Where singlings are redistilled in a closed, locked still, as defined in § 221.125, they may be conveyed directly through closed pipes from the first still to the redistilling unit or they may be run into singlings tanks and thence to the redistilling unit. When so handled, all openings in the redistilling unit through which access may be had to the spirits must be securely locked. Singlings thus conveyed into a closed, locked still may be redistilled without supervision of a storekeeper-gauger and without gauging and recording on Form 15 prior to redistillation, but they must be redistilled during the month in which they are produced, unless the quantity remaining on hand at the end of the month is ascertained and recorded on Form 15.

§ 221.367 *Collection of singlings for redistillation.* Where, under the process of distillation employed, singlings are separated and collected for redistillation otherwise than as provided in § 221.366, such singlings shall be run through closed pipes from the still into locked singlings tanks, in which they shall remain until released by the storekeeper-gauger for redistillation under his supervision.

§ 221.368 *Gauging of singlings.* Where singlings are collected for redistillation otherwise than in a closed, locked still as provided in § 221.366, they need not be gauged (measured and proofed) by the storekeeper-gauger before being released from the singlings tanks for redistillation. Singlings produced each month must be redistilled as expeditiously as possible. They may not be accumulated from month to month, but singlings produced during one month may be mixed with the production for the succeeding month for redistillation if the quantity on hand at the close of the month is first ascertained.

§ 221.369 *Redistillation of singlings.* When the singlings have been released by the storekeeper-gauger, they shall be run, by means of closed pipelines, direct from the singlings tank into the still, or the distilling material sump, or the chargers of the still, or the distilling material pipeline leading to the still. Where the singlings are run into the distilling material sump, or the chargers of the still, or the distilling material pipeline leading to the still, such sump or charger or pipeline must be closed and the operations must take place at the time the distilling material is being run into the still and the singlings thus mixed with the distilling material and distilled with the same. The singlings will be run into the still, or distilling material sump, or chargers of the still, or distilling material pipeline, and redistilled, under the immediate supervision of the storekeeper-gauger.

§ 221.370 *Record of singlings.* The quantity of singlings on hand at the close of the month will be determined by

inventory and such quantity entered by the distiller on Form 15 rendered for the month.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.371 *Distillation requiring supervision.* Champagne, or other sparkling wine, and artificially carbonated wine, received for use as distilling material, must be distilled under the supervision of an internal revenue officer. Where brandy is received for redistillation, the distillation thereof must also be under the supervision of an internal revenue officer.

(68A Stat. 633, 665; 26 U. S. C. 5192, 5362)

§ 221.372 *Request for assignment of officer.* When it is desired to distill such wines or to redistill brandy, and there is no officer on duty at the distillery, the distiller will request the assistant regional commissioner to assign an officer to supervise the distillation. This request must set forth the time it is desired to begin distillation, the kind and approximate quantity of wine to be distilled or brandy to be redistilled, and the time that will be required for distillation. The request must be filed with the assistant regional commissioner in ample time for an officer to be detailed to such duty. If an officer is on duty at the distillery, the request to supervise the distillation will be filed with such officer.

(68A Stat. 633; 26 U. S. C. 5192)

§ 221.373 *Duty of officer.* The officer supervising the distillation of such wine, or brandy for redistillation, will, before distillation is commenced, determine the kind, quantity, and alcoholic content of the material to be distilled and will see that such data are properly entered on Form 15. The officer will then supervise the distillation, and upon completion thereof will submit a report to the assistant regional commissioner showing the kind, quantity, and alcoholic content of the wine or brandy distilled.

(68A Stat. 633; 26 U. S. C. 5192)

§ 221.374 *Heads and tails.* Distillates containing one-half of 1 percent or more of aldehydes, or 1 percent or more of fusel oil, known as "heads" and "tails," separated in the course of distillation, will be run into locked tanks, as provided in § 221.400.

(68A Stat. 634; 26 U. S. C. 5194)

LOCKING OF DISTILLERY

§ 221.375 *When to be locked.* Whenever brandy is contained in any place in the distillery other than under Government lock in the receiving room or brandy deposit room, or package store-room within the brandy deposit room, the distillery building or portion thereof in which such brandy is contained must be kept securely locked by the distiller in the absence of himself or his agents. The locks used by the distiller to secure doors, windows, or other openings of the distillery building, or portions thereof, in which brandy is so contained, must be such as will, in the opinion of the assistant regional commissioner, safeguard the brandy against illegal removal.

§ 221.376 *Keys of distillery locks.* The distiller shall furnish the assistant regional commissioner as many keys to the locks provided for securing the gates or doors of any fence or wall around the distillery, the entrance door or doors of the distillery building, or portions thereof, which are required to be locked, and the entrance doors of other structures on distillery premises, as may be deemed necessary by the assistant regional commissioner from time to time, in order that the distillery premises and any structure situated thereon, or any portion thereof may be accessible at any time to internal revenue officers authorized to enter and inspect the premises.

(68A Stat. 636; 26 U. S. C. 5196)

TREATMENT OF BRANDY IN COURSE OF DISTILLATION

§ 221.377. *Rectification.* The law provides that every person shall be regarded as engaged in the business of rectifying who rectifies, purifies, or refines distilled spirits by any process other than by original and continuous distillation from mash, wort, or wash through continuous, closed vessels and pipes until the manufacture thereof is complete. A distiller may, therefore, carry his product through as many processes of distillation as he may desire without becoming liable as a rectifier, provided the process is continuous (as defined in § 221.365), commencing with the distillation of the fermented material, and the product of distillation is carried through continuous, closed vessels and pipes until the finished product is deposited in the receiving tanks: *Provided*, That the redistillation of brandy received in bond from an internal revenue bonded warehouse or another distillery pursuant to provisions of this part shall not constitute rectification.

(68A Stat. 607, 616; 26 U. S. C. 5025, 5082)

§ 221.378 *Purifying or refining brandy.* Under the law, distillers are allowed to purify or refine brandy in the course of original and continuous distillation, through any material which will not remain incorporated with such brandy when the manufacture thereof is complete. The apparatus to be used for purifying or refining in a distillery must be arranged and constructed as required by this part.

(68A Stat. 607; 26 U. S. C. 5025)

§ 221.379 *Percolation through oak chips.* Brandy may be percolated through or treated with oak chips which have not been treated with any chemical, upon approval of the process. The apparatus to be used for percolating brandy must be arranged and constructed as required by this part.

(68A Stat. 607; 26 U. S. C. 5025)

§ 221.380 *Samples before and after treating.* Where the distiller has been authorized to introduce materials or substances into brandy during the course of original and continuous distillation for the purpose of purifying or refining the brandy, or where he has been authorized to introduce oak chips into the brandy, the assistant regional commis-

sioner will cause storekeeper-gaugers to procure samples of such brandy, both before and after processing, when the process is first used and thereafter from time to time. The samples will be forwarded to the Government chemist for analysis. The chemist will furnish a report thereof to the assistant regional commissioner.

(68A Stat. 616; 26 U. S. C. 5082)

§ 221.381 *Disposition of substances used for treating brandy.* Materials used for purifying or refining brandy, and oak chips introduced into the brandy, will be thoroughly washed, steamed, or otherwise treated to extract the brandy therefrom before removal from the process. Upon removal, the materials must be burned in the distillery furnace or in the distillery yard. If such burning is not practicable, due to the type of furnace in use, fire regulations, or to other valid reason, such materials must be treated with kerosene before the removal thereof from the distillery premises. Where kerosene is used, it must be sprayed or sprinkled on the materials, using not less than 1 gallon of kerosene to each 100 pounds of materials, in such manner as to preclude the abstraction of potable brandy from any part of the entire mass after the materials are removed from the distillery premises. This will be effected by stirring or agitating the materials while the kerosene is being applied. Such burning or treating of materials must be done under the supervision of an internal revenue officer. The assistant regional commissioner may authorize any other disposition of the materials as will effectually prevent recovery of spirits therefrom.

DEPOSIT OF BRANDY IN RECEIVING TANKS

§ 221.382 *Immediate deposit required.* All brandy produced must be deposited immediately upon completion of manufacture in securely locked receiving tanks. Brandy produced and conveyed into receiving tanks each month must be kept separate in such tanks until gauged by the storekeeper-gauger and removed on or before the 10th day of the succeeding month. The brandy must be deposited in separate receiving tanks according to class (brandy, spirits—fruit) and type (grape brandy, apple brandy, peach brandy, etc.).

COMPARISON OF ACTUAL YIELD WITH CALCULATED YIELD

§ 221.383 *Abnormal differences to be investigated.* The storekeeper-gauger will verify the distiller's computation of the calculated yield from the materials distilled and will compare the same with the quantity of brandy produced therefrom. Where the difference between the calculated yield and the actual yield is more than that determined by experience to be the normal difference for the particular plant, the storekeeper-gauger will make a thorough inquiry to determine the reason or reasons therefor, and will make a full report of his findings to the assistant regional commissioner. If the findings of the officer do not fully explain the discrepancy, the assistant regional commissioner will cause such further inves-

igation to be made as may be deemed advisable.

§ 221.384 Distiller's responsibility. Distillers will be held responsible for producing a quantity of brandy equal to that contained in the material distilled, less the actual deficiency resulting in distillation. Assistant regional commissioners will carefully check the returns of distillers as to production and, where the difference between the calculated yield and the actual yield is more than that determined by experience to be the normal difference for the particular plant, they will investigate any excessive deficiency in production thus disclosed, unless such deficiency is satisfactorily explained in reports submitted by internal revenue officers on duty at or detailed to visit the plant. Where, in any case, the facts indicate that brandy has been produced and not accounted for, the assistant regional commissioner will proceed in accordance with Subpart X of this part.

DISPOSITION OF RESIDUE OF DISTILLING MATERIALS

§ 221.385 Authorized use of such residue. The undistilled residue of distilling material may be removed from distilleries for use as fertilizer or other by-product, providing the liquid is expressed from the material before removal and it is not received on any bonded wine cellar or other distillery premises.

§ 221.386 Removal. Where a storekeeper-gauger is assigned to the distillery the material will be removed in his presence. The distiller will make appropriate entry on Form 15 of the removal of such material. If disposed of to other persons, the names and addresses of such persons should be reported on Form 15.

(68A Stat. 637; 26 U. S. C. 5197)

DESTRUCTION OF DISTILLING MATERIAL UNFIT FOR DISTILLATION

§ 221.387 Inspection. When the distiller reports that he has on hand any distilling material which has become unfit for distillation and which he desires to destroy, the storekeeper-gauger will inspect such material for the purpose of determining whether it is actually unfit for distillation. Where no officer is assigned to the distillery, the distiller will request the assistant regional commissioner, in writing, to detail an officer to supervise destruction of the material, stating the kind, quantity, alcoholic content, and condition of the material. The assistant regional commissioner will detail an officer to inspect the material and, if found unfit for distillation, to supervise its destruction, unless the quantity involved is, in the judgment of the assistant regional commissioner, insufficient to justify the visit of an officer, in which event the assistant regional commissioner may, in writing, authorize the distiller to destroy the material without supervision.

§ 221.388 Report of destruction. The material must not be destroyed until it is inspected by an internal revenue officer, unless destruction without supervision is authorized by the assistant regional commissioner. When the material is found by an inspecting internal

revenue officer to be useless for distillation, he will supervise destruction thereof and submit a report of his action to the assistant regional commissioner. The destruction of the material will be entered by the distiller on Form 15.

(68A Stat. 633, 637; 26 U. S. C. 5192, 5197)

§ 221.389 Destruction of wine. Wine removed from a bonded wine cellar free of tax for use as distilling material may not be destroyed at a distillery unless the wine tax is first paid thereon by the distiller, or it is determined by chemical analysis that the wine is unfit for use.

(68A Stat. 665; 26 U. S. C. 5362)

SUBPART Q—COLLECTION AND REMOVAL OR VOLUNTARY DESTRUCTION OF DISTILLATES, BRANDY, DISTILLED WATER, FUSEL OIL, AND CARBON DIOXIDE GAS

COLLECTION, REMOVAL FOR DENATURATION OR DESTRUCTION OF CERTAIN DISTILLATES

§ 221.400 General. Fruit distillers may collect in locked tanks provided in accordance with § 221.121, distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil, commonly known as "heads" and "tails," removed in the course of distillation. Such distillates may be removed from the distillery for denaturation or destroyed on the distillery premises, under the immediate supervision of the storekeeper-gauger assigned to the distillery or another internal revenue officer designated by the assistant regional commissioner for the purpose. When so denatured or destroyed, such distillates shall not be subject to the tax imposed by law upon distilled spirits. Such distillates so collected in fruit distilleries may be drawn into casks, barrels, or other containers and stored in the brandy deposit room of the distillery where produced, pending removal for denaturation.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.401 Collection of distillates. Distillates containing one-half of 1 percent or more of aldehydes, or 1 percent or more of fusel oil, collected in locked tanks at fruit distilleries shall be removed from such tanks for denaturation or destroyed or transferred to the brandy deposit room within 30 days from the date of the commencement of the collection thereof, unless the distillates are to be shipped for denaturation and the quantity collected in such tanks during such period is insufficient for a carload shipment (but not over 10,000 wine gallons), in which event the distiller may continue to accumulate such distillates in such tanks until a sufficient quantity for a carload shipment has been so collected: *Provided*, That no such distillates shall be held at the distillery for a period exceeding 90 days, unless the distillates are transferred to the brandy deposit room.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.402 Samples by distiller. Distillers may procure, in accordance with the procedure prescribed in Subpart W, samples for laboratory analysis of such distillates.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.403 Application. Whenever the distiller desires to remove any distillate containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil to a denaturing plant for denaturation or to destroy it or to draw it into packages and store it in the brandy deposit room of the distillery pending removal for denaturation, he shall make application, in triplicate, for permission so to do. The application will be made on Form 1577 if the distillate is to be destroyed immediately upon being drawn from the tanks in which collected, or Form 1578 if the distillate is to be removed to a denaturing plant for denaturation. Where a storekeeper-gauger is assigned to the distillery, application on Form 1577 will be submitted to such officer for approval. Where the application is in order the storekeeper-gauger will approve the form, gauge the distillate in accordance with the provisions of § 221.408 and supervise the destruction thereof as provided in § 221.414. Form 1578 will be filed with the assistant regional commissioner through the storekeeper-gauger.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.404 Samples by storekeeper-gauger. Where application on Form 1578 is submitted through the storekeeper-gauger assigned to the distillery, the storekeeper-gauger will, upon receipt of the application, inspect the distillate to determine the correctness of the distiller's statements. The officer will obtain a 1-pint sample or, if deemed necessary, a 1-quart sample, from each tank or other receptacle, label each sample for proper identification, note on each copy of the application the serial number of the sample, the serial number of the tank or other receptacle from which the samples were removed, and the date of removal. The samples will be forwarded, with a letter of transmittal, in duplicate, to the regional chemist at the expense of the distiller. The inlet of each tank or receptacle must be closed and locked and the contents thoroughly agitated before a sample is taken. The inlet, outlet, and all other openings of the tank will be secured with Government locks pending analysis of the sample and action on the application.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.405 Assistant Regional Commissioner's order to gauge. If the chemist's report shows that the distillate contains one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil, the assistant regional commissioner will execute his order to the storekeeper-gauger on Form 1578, directing him to gauge the distillate and supervise the removal thereof for shipment to the denaturing plant named in the application upon presentation of proper permit, or the temporary storage thereof in packages in the brandy deposit room pending removal for denaturation. The assistant regional commissioner will forward all copies of the application, with one copy of the chemist's report, to the storekeeper-gauger assigned to the distillery or detailed to visit the distillery for such purpose.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.406 *Disapproval of application.* If the report of the Government chemist shows that the distillate contains less than the required percentage of aldehydes or fusel oil, the assistant regional commissioner will disapprove the application and return one copy to the distiller and one copy to the storekeeper-gauger, if any, at the distillery, accompanied by a statement of the reasons for disapproval.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.407 *Distillates not meeting requirements for denaturation.* Where distillates are of insufficient proof for denaturation, or contain less than the required percentage of aldehydes or fusel oil, they may, for the purpose of further distillation, be returned to the still through pipelines constructed as provided in § 221.130. Should the distiller desire to remove or destroy the distillates after such redistillation, a new application must be submitted in accordance with §§ 221.403 and 221.404.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.408 *Gauge of distillate.* The storekeeper-gauger will gauge the distillates authorized to be removed for denaturation or destruction. If the distillate is to be destroyed, or removed by pipeline to storage tanks or to tank cars or tank trucks, such gauge may be made either by weight or by volume. The details of gauge will be entered on Form 1520 which will be prepared in triplicate if the distillate is to be immediately destroyed or drawn into packages for storage in the brandy deposit room, and in quintuplicate if the distillate is to be immediately removed for denaturation. An extra copy of Form 1520 will be prepared when the distillate is to be shipped to a denaturing plant in another region.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.409 *Marking and branding of packages.* When the distillate is drawn into packages either for immediate removal for denaturation or for storage in the brandy deposit room pending removal for denaturation, such packages shall be marked and branded in the same manner as packages of other brandy are required to be marked and branded when removed from the distillery for deposit in a bonded warehouse, except that (a) the kind of brandy shall be designated by the words "Impure Spirits—For Denaturation," plainly and durably stenciled or marked on the head of the package in letters not less than three-fourths inch in height; (b) the phrase "Contains _____% Aldehydes," or "Contains _____% Fusel Oil," or "Contains _____% Aldehydes and _____% Fusel Oil," shall also be plainly and durably stenciled or marked on the head of the package following the words "Impure Spirits—For Denaturation"; and (c) the proof at which the brandy was distilled need not be placed upon the package.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.410 *Storage of distillate.* When distillates are drawn into packages or removed by pipeline for storage in the brandy deposit room the storekeeper-

gauger will prepare a report on Form 1520 in triplicate, one copy of which will be forwarded to the assistant regional commissioner, one copy furnished to the distiller and the remaining copy retained as a permanent record in the office of the storekeeper-gauger. Form 1578 will be retained by the storekeeper-gauger until the distillate is shipped to the denaturing plant.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.411 *Transfer to storage tanks.* On receipt of approved Form 1578 distillates containing one-half of 1 percent or more of aldehydes, or 1 percent or more of fusel oil, may be transferred by pipeline from the heads and tails tanks in which originally collected to heads and tails storage tanks in the brandy deposit room and stored therein pending removal for denaturation. Form 1520 will be prepared as provided in § 221.408.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.412 *Period of storage in brandy deposit room.* Distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil stored in the brandy deposit room of the fruit distillery must be removed therefrom and shipped to a denaturing plant for denaturation within 30 days after the suspension of distilling operations for the season or for a period of 30 days or more: *Provided*, That where the distillery is not so suspended the assistant regional commissioner may require removal of the distillate at such times as he may deem proper.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.413 *Removal of previously filled packages.* When the distiller desires to remove previously filled packages of such distillate from the brandy deposit room for shipment to a denaturing plant for denaturation, he will so advise the storekeeper-gauger who will inspect the distillate. Packages will not be re-gauged upon removal from the brandy deposit room unless they bear evidence of loss. Where the packages are removed on the filling gauge for denaturation, the storekeeper-gauger will prepare five copies of Form 1520 if the denaturing plant to which they are to be shipped is located in the same region, and six copies if it is located in another region. The necessary details will be copied from the report of the filling gauge.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.414 *Destruction of distillate.* The distillate authorized to be destroyed will be run into the sewer or destroyed by other suitable means. The destruction must be accomplished under the immediate supervision of the storekeeper-gauger, who will then execute his report on Part 3 of Form 1577 and will attach to each copy of Form 1577 a copy of the report of gauge. The storekeeper-gauger will forward one copy of Form 1577, with Form 1520 attached, to the assistant regional commissioner, retain one copy of each form on file and deliver one copy to each to the distiller.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.415 *Release for denaturation.* The distillate may be removed for ship-

ment to a denaturing plant for denaturation pursuant to a special permit issued by the assistant regional commissioner on Form 1463, properly modified, authorizing the denaturer to procure the same. The storekeeper-gauger will not release the distillate for shipment until the distiller has presented to him such special permit for examination. The distillate must be drawn into packages and gauged, marked, and branded as provided in §§ 221.408 and 221.409, unless previously so packaged for storage in the brandy deposit room, or gauged and run into railroad tank cars or tank trucks in accordance with the provisions of § 221.416, under the personal supervision of the storekeeper-gauger. When such impure brandy is removed from the distillery for denaturation it must, in each instance, be shipped to a denaturing plant. Such brandy may not be shipped to an alcohol plant or an alcohol bonded warehouse, nor may it after receipt at a denaturing plant be redistilled or used for any purpose other than for denaturation.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.416 *Removal in tank cars or tank trucks.* The removal of such distillate in railroad tank cars or tank trucks from the distillery to the denaturing plant for denaturation shall be in accordance with the procedure (insofar as applicable) and under the conditions governing the removal and transfer of other brandy in bond in such tank cars or tank trucks, as prescribed in this part: *Provided*, That, the distillate may be gauged by volume. The markings prescribed in § 221.409, respecting the kind of brandy and the percentage of aldehydes or fusel oil therein, shall be added to the label required to be affixed to such tank cars or tank trucks of brandy before they are released.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.417 *Report of shipment to denaturing plant.* When such distillates are released from the distillery for transportation to the denaturing plant, the storekeeper-gauger will execute his report on part 3 of Form 1578 and will attach to each copy of Form 1578 a copy of Form 1520. The storekeeper-gauger will forward one copy of Form 1578, with Form 1520 attached, to the assistant regional commissioner of the region from which the shipment is made, retain one copy of each form on file, deliver one copy of each form to the distiller, forward one copy of Form 1520 to the proprietor of the denaturing plant and one copy to the storekeeper-gauger at the denaturing plant. Where the denaturing plant is in another region the extra copy of Form 1520 provided for in §§ 221.408 and 221.413 will be forwarded to the assistant regional commissioner of such region.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.418 *Losses of distillates.* The procedure prescribed by §§ 221.645-221.655 will be followed in connection with losses of such distillates while on the premises of a registered fruit distillery.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.419 *Use for denaturation.* If the impure spirits are of improper proof for denaturation, they may be mixed with other spirits of higher proof at the denaturing plant in order to obtain the required proof for denaturation.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.420 *Distiller's records.* Distillates collected for destruction or for removal for denaturation, will be included by the distiller in the inventory of singlings reported on Form 15 until gauged and destroyed or removed for denaturation, whereupon appropriate entries will be made on such form covering the disposition of such distillates. Distillates produced during one month may not be mixed with those produced in the succeeding month without prior ascertainment of the quantity on hand at the close of the month.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

VOLUNTARY DESTRUCTION OF BRANDY

§ 221.421 *Application.* Whenever the distiller desires to destroy brandy he will make application to the assistant regional commissioner therefor on Form 1577, in triplicate, for such authorization. Form 1577 will be filed through the storekeeper-gauger assigned to the distillery. Brandy destroyed with proper authorization shall not be subject to the tax imposed by law on brandy.

(68A Stat. 604; 26 U. S. C. 5011)

§ 221.422 *Action on application.* On receipt of Form 1577 the storekeeper-gauger will inspect the brandy to verify statements of the distiller and where the brandy is accurately described in the application execute his certificate of inspection on Form 1577 and forward all copies to the assistant regional commissioner. If the application is found to be in order the assistant regional commissioner will execute his order to the storekeeper-gauger directing him to gauge the brandy and supervise the destruction thereof.

(68A Stat. 604; 26 U. S. C. 5011)

§ 221.423 *Gauge and destruction.* The storekeeper-gauger will gauge the brandy authorized to be destroyed and enter the details of the gauge on Form 1520 in triplicate. Such gauge may be made either by weight or by volume. The brandy authorized to be destroyed will be run into the sewer or destroyed by other suitable means. The destruction must be accomplished under the immediate supervision of the storekeeper-gauger, who will then execute his report of destruction on Form 1577 and will attach to each copy a copy of Form 1520. One copy of Form 1577 with 1520 attached will be forwarded to the assistant regional commissioner, one copy will be retained and filed and one copy will be delivered to the distiller. The distiller will take appropriate credit for the brandy destroyed at a special line on Form 15.

(68A Stat. 604; 26 U. S. C. 5011)

COLLECTION AND REMOVAL OF DISTILLED WATER

§ 221.424 *Collection.* If distilled water is collected at the distillery, it

must be run into storage tanks provided in accordance with § 221.123, and retained therein until drawn off and removed as provided in §§ 221.425-221.427.

§ 221.425 *Removal.* Distilled water must be drawn off into barrels or other containers prior to removal from the distillery premises: *Provided,* That such water may be transferred off the distillery premises to contiguous plants operated under internal revenue laws, including tax-paid bottling houses, by means of an independent pipeline constructed and installed in accordance with the provisions of § 221.123. Distilled water must under no circumstances be drawn off or removed through the receiving room or brandy deposit room or bonded warehouse. Barrels or other wooden containers in which distilled spirits were previously packaged may not be used for the removal of distilled water.

§ 221.426 *Marking of packages.* If distilled water is drawn into packages for removal from the distillery premises, such packages must be marked by the distiller with his name, distillery number, location (city or town and State), the words "Distilled Water," and the date of removal, in distinct and legible letters.

§ 221.427 *Supervision of removal.* No distilled water shall be removed, either in packages or by pipeline, except when the storekeeper-gauger is present on the premises, nor shall any such removal be made without prior notification to the storekeeper-gauger. The distiller will note on Form 15 all removals of distilled water, including the name and address of the consignee.

COLLECTION, TEST AND REMOVAL OF FUSEL OIL

§ 221.428 *Collection.* If fusel oil is collected at the distillery, it must be run into locked storage tanks provided for the purpose in accordance with § 221.119, and retained therein until destroyed or tested and removed from the distillery premises or transferred to storage tanks. The test of fusel oil for the purpose of determining the presence of ethyl alcohol therein must be made in accordance with the requirements of §§ 221.431-221.434, or by such other method as may be prescribed by the Director, Alcohol and Tobacco Tax Division. If fusel oil is destroyed without testing, the destruction shall be pursuant to the procedure described in §§ 221.403, 221.408 and 221.414.

§ 221.429 *Storage.* Where fusel oil is transferred from the tanks in which it is collected in the course of distillation to storage tanks for temporary storage pending removal from the distillery premises, it must be tested as provided by § 221.428 immediately before being deposited in the storage tanks and immediately before being drawn therefrom into shipping containers.

§ 221.430 *Removal.* The removal of fusel oil from the distillery will be permitted upon compliance with the requirements of §§ 221.431-221.438.

§ 221.431 *Washing and purifying.* Where fusel oil is to be removed, it must first be thoroughly washed and purified and before being removed from the storage tank must be well mixed and a sample drawn from each tank into a test tube to be provided by the proprietor for use by the storekeeper-gauger in determining whether the oil is substantially free from alcohol.

§ 221.432 *Test tube.* The tube used in testing fusel oil prior to removal must be of glass, bulb-shaped, and closed at one end, having a graduated scale marked upon the glass in degrees from 0 near the top to 100 near the swell of the bulb. The bulb shall contain three times as much liquid as that portion of the tube which is graduated from 0 to 100.

§ 221.433 *Test.* In the testing of fusel oil prior to removal, after the tube has been filled with saturated salt solution up to the mark 100, oil shall be added until the tube is filled to the mark 0. The oil and saturated salt solution shall then be thoroughly mingled by violently agitating the contents of the tube. If, after sufficient time has been allowed for the oil to separate fully from the saturated salt solution and resume its position at the top of the tube, the scale shall show that not more than 10 degrees or 10 percent of the oil has disappeared or been dissolved in the saturated salt solution, the oil shall be passed as merchantable, that is to say, containing so small a quantity of alcohol as to remove all practical possibility of recovering the same, but if over 10 degrees of oil disappears, the oil shall not be considered as sufficiently purified, and may not be removed in that condition.

§ 221.434 *Saturated salt solution.* The saturated salt solution to be used in the testing of fusel oil must be a solution of common table salt in water, containing all the salt which the water is capable of dissolving. The solution is to be provided by the distiller.

§ 221.435 *Containers.* Fusel oil which meets the requirements of the prescribed test may be removed from the distillery in barrels, drums, or similar packages or tank cars or tank trucks. Packages containing such fusel oil shall be marked by the distiller with his name, distillery number, location (city or town and State), the words "Fusel Oil," and the date of removal, in distinct and legible letters. When removal is made in tank cars or tank trucks the distiller will affix to each car or truck a label containing such data.

§ 221.436 *Supervision.* All fusel oil must be removed from the distillery under the supervision of the storekeeper-gauger.

§ 221.437 *Record of removal.* The distiller will enter on his monthly return, Form 15, all removals of fusel oil, including the name and address of the consignee, and the percentage of loss shown upon the test of such oil. The storekeeper-gauger will prepare Form 1520 in triplicate covering removals of fusel oil. The storekeeper-gauger will give one copy of Form 1520 to the dis-

tiller, retain one copy and forward the remaining copy to the assistant regional commissioner.

§ 221.438 *Disposition of water used for washing fusel oil.* The water used for washing or purifying the oil in the tanks may be conveyed directly to the still, or it may be run into a tank or into the sewer, or it may be otherwise destroyed on the premises under the supervision of the storekeeper-gauger. If the wash water is run into the still or tank, the quantity will not be entered on Form 15. If the wash water is run into the sewer or otherwise destroyed, the alcoholic content and quantity will be reported on Form 1520 and included in the report of production on Form 15.

RECOVERY AND REMOVAL OF CARBON DIOXIDE

§ 221.439 *Procedure.* Carbon dioxide may be recovered from fermenters and removed from the distillery premises, provided it is first thoroughly washed or scrubbed and purified to remove the alcohol therefrom. Where carbon dioxide is recovered, the washwater may be collected in a tank and transferred by pipeline to a fermenter or to the distilling material sump, or measuring tank. Where the washwater is transferred to the fermenter or to the distilling material measuring tank, the transfer must be made prior to the testing of the distilling material at the time of distillation. Where the washwater is to be transferred to the distilling material sump after the calculated yield has been determined, the alcoholic content, the number of gallons, and the calculated yield thereof, will be determined and interlined in part 1 of Form 15. An approved ebullimeter shall be used in determining the alcoholic content of the washwater. If the washwater is not utilized in the manufacture of brandy, it will be run into the sewer or otherwise destroyed on the premises. Entry of such disposition will not be made on Form 15.

SUBPART R—ADDITION OF BURNT SUGAR OR CARAMEL TO BRANDY

§ 221.450 *Time of addition.* Except as provided in § 221.454, fruit distillers desiring to add burnt sugar or caramel to brandy must do so prior to the time the brandy is gauged for removal from the distillery. The burnt sugar or caramel must be added in the presence of the storekeeper-gauger.

(68A Stat. 607; 26 U. S. C. 5025)

§ 221.451 *Sweetening properties.* The burnt sugar or caramel added to brandy shall not contain any substantial quantity of sugar which has not been caramelized, or possess any material sweetening properties.

(68A Stat. 607; 26 U. S. C. 5025)

§ 221.452 *Method of adding burnt sugar or caramel.* The burnt sugar or caramel may be added to the brandy while it is in the receiving tanks or in storage tanks in the brandy deposit room, or the brandy may be transferred to special tanks or vats and the burnt sugar or caramel added to the same therein. Where the brandy is transferred to special tanks or vats for the addition of

burnt sugar or caramel thereto, such tanks or vats must be fitted with covers equipped for locking with Government locks, and such covers and other openings of the tanks or vats must be so locked unless the brandy is drawn into packages or removed by pipeline immediately in the presence of the storekeeper-gauger. The burnt sugar or caramel may be dissolved in a small quantity of hot water, or in a small quantity of brandy removed from the tank or vat for the purpose, before it is added to the bulk of the brandy in the tank or vat.

§ 221.453 *Determination of proof of brandy.* After the burnt sugar or caramel is added, the brandy in the tank will be thoroughly plunged and agitated and its proof then determined. The proof of the brandy will, however, be checked several times while the brandy is being drawn off. The proof so ascertained will be regarded as the proof of the brandy run into all the packages filled from the tank.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.454 *Addition to packages in warehouse.* Burnt sugar or caramel may be added to packages of brandy in warehouse only where the brandy is unmerchantable by reason of being deficient in color and it is shown that the failure to properly color the brandy prior to the filling of the packages was due to no negligence or fault of the distiller. In such cases, application must be filed in duplicate with the storekeeper-gauger in charge by the distiller or warehouseman, showing the serial numbers of the barrels, the name of the producing distiller, and the necessity for the addition of the burnt sugar or caramel to the brandy. If the application is in order the storekeeper-gauger in charge will approve the application and permit the addition, under his supervision of burnt sugar or caramel, conforming with § 221.451, to each of the barrels, after the brandy has been regauged for tax payment and prior to the affixing of the prescribed stamps to the barrels. The original copy of the approved application will be retained by the storekeeper-gauger and the duplicate returned to the applicant.

(68A Stat. 607; 26 U. S. C. 5025)

SUBPART S—BRANDY FOR REDISTILLATION

RECEIPTS FOR REDISTILLATION

§ 221.460 *General.* Brandy may be received at the distillery for redistillation pursuant to an approved application in accordance with §§ 221.461 and 221.462. Brandy of any proof may be received in approved containers, from any other distillery or from any internal revenue bonded warehouse. Brandy received in tank cars or tank trucks may be transferred to tanks by means of a hose connection under the supervision of an internal revenue officer. The consignee distiller shall assume the liability for all taxes and liens on such brandy from the time it leaves the premises of the consignor's distillery or warehouse and, upon redistillation, all prior obligations as to taxes and liens on such brandy shall be superseded and the redistiller shall be

liable for the same as if the brandy were originally produced by him.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.461 *Special application for permission to receive brandy for redistillation.* A distiller desiring to receive brandy for redistillation shall make written application to the assistant regional commissioner of the region in which the applicant's distillery is located for permission to receive and redistill such brandy. Each such application shall be prepared in quadruplicate, serially numbered, beginning with No. 1, and contain the following information:

(a) The kind of brandy and the approximate date of production;

(b) The name, registry number and location of the producing distiller;

(c) Approximate proof of original distillation;

(d) The approximate quantity, proof and proof gallons of the brandy to be redistilled;

(e) The name, registry number and location of the distillery or warehouse from which such brandy will be removed;

(f) The serial numbers of packages, tanks or other receptacles in which such brandy is contained, if known;

(g) The method of transportation by which the brandy will be conveyed to the redistiller's premises;

(h) Statement of the process by which redistillation of the brandy will be accomplished, including any special treatment or process to be used;

(i) The type of brandy to be produced by the redistillation and approximate proof at which such brandy will be redistilled;

(j) The approximate period of time necessary to complete redistillation of all brandy covered by the application;

(k) The purpose of the proposed redistillation.

The application may cover several lots of brandy or may be of a continuing nature for a stated period of time.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.462 *Action by assistant regional commissioner.* Upon receipt of an application for permission to receive brandy for redistillation, the assistant regional commissioner will determine whether all required information has been furnished. If the application is in order the assistant regional commissioner will authorize removal of the brandy subject to such conditions and restrictions as are deemed necessary for protection of the revenue. He will also determine whether the applicant distiller's bond, or consent of surety filed in support thereof, covers such removals, and that the penal sum of the bond thereof is sufficient, and will note the amount of the bond, if less than the maximum, and his approval on each copy of the application, forward one copy to the storekeeper-gauger assigned to the applicant's premises, and forward the original and the remaining copy to the applicant. Where approval of an application is conditional or subject to restrictions, such conditions will be stipulated on the application at the time of approval by the assistant regional

commissioner. In case the application is disapproved, the assistant regional commissioner will note his disapproval on each copy of the application with statements as to reason or reasons therefor, retain one copy of the application and return the remaining copies to the applicant.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.463 *Form 236*. Upon receipt of an approved special application for permission to receive brandy for redistillation, the consignee distiller shall prepare application on Form 236, properly modified for that purpose, for transfer of such brandy, and will enter thereon the serial number and date of the special application authorizing such removal. Where the special application covers removal of several lots of brandy for redistillation over an extended period of time, it will involve the use of multiple sets of Form 236; however, in no case shall the total quantity represented by the Forms 236, singly or collectively, exceed the maximum quantity of brandy stated in the approved special application covering such removals. Where the consignor distillery or warehouse is located in the same region, the original and five copies of the Form 236 will be prepared and delivered to the storekeeper-gauger; the original and six copies if the consignor distillery or warehouse is located in a different region. The storekeeper-gauger will execute his certificate on all copies of the Form 236, indicating that the distiller's bond is sufficient to cover the redistillation of the brandy described, pursuant to the assistant regional commissioner's notation as to bond coverage on the special application and will return all copies to the distiller. The distiller will forward all copies of the approved Form 236 and one copy of the approved special application to the consignor distiller or warehouseman.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.464 *Quantity to be determined at time of receipt*. Where brandy for redistillation is received, the actual quantity received will be ascertained by appropriate gauge. Where brandy for redistillation is received in packages, such packages, including char and chips if any, shall be thoroughly rinsed and the rinse water added to the brandy before gauging. Such char and chips will be disposed of in accordance with § 221.381. Immediately upon ascertaining the quantity received the brandy will be transferred to tanks conforming to § 221.115, or introduced into the distilling system where the redistillation is to be accomplished simultaneously with primary distillation of other distilling materials. Where brandy for redistillation is introduced directly into the distilling system, the system must be locked and sealed in such a manner as to prevent access to its contents: *Provided*, That where small quantities of brandy for redistillation are to be mingled with fermented material in a fermenter, charger or sump, locking facilities will not be required where the volume of brandy is less than five percent of the volume of fermented material. Such brandy re-

ceived in tank cars or tank trucks may be conveyed directly into the weighing tank in the distillery for gauging prior to deposit in the tanks or distilling system. Brandy received by pipeline for redistillation from a contiguous distillery or warehouse must be deposited directly into tanks on the redistiller's premises. Brandy produced from different type materials, such as grapes, apples, or peaches, must be deposited in separate tanks and redistilled separately or introduced into the distilling system with the same type of distilling material from which such brandy was originally produced: *Provided*, That such restrictions shall not apply to brandy which is to be redistilled and branded as "Neutral Spirits-Fruit" or "Spirits-Fruit" and which is not to be withdrawn (and may not under any circumstances be withdrawn) for use in wine production. The storekeeper-gauger shall note the quantity received in proof gallons on each copy of the gauge report covering transfer of the brandy and use such information in the verification of entries in monthly records and reports, as to the quantity and type of distilling material thus received.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.465 *Losses in transit of brandy received for redistillation*. Where the gauge of brandy received for redistillation discloses deficiencies between the shipping and receiving gauges that cannot be attributed to normal transit losses or variation in gauge the applicable procedure prescribed by §§ 221.645-221.655 will be followed. In all cases the actual quantity of brandy received for redistillation and the quantity lost in transit, as indicated by comparison of the shipping and receiving gauges, will be entered by the storekeeper-gauger on the Form 236 and Form 1520 covering transfer of each lot of brandy received for redistillation. The storekeeper-gauger will retain one copy each of Forms 236 and 1520, give one copy each of Forms 236 and 1520 to the distiller and forward one copy each of such forms to his assistant regional commissioner in the case of intraregion transfers, two copies of Form 236 and one copy of Form 1520 in the case of interregion transfers, in which case the assistant regional commissioner will forward the extra copy of Form 236 to the assistant regional commissioner-consignor.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.466 *Redistillation of brandy*. Brandy received at a fruit distillery for redistillation must be redistilled as expeditiously as normal distilling operations will permit. The brandy introduced into the distilling system shall be entered in proof gallons according to type (as defined in §§ 221.553-221.555) by the distiller on his record of materials used. Where brandy received for redistillation is mingled with wine or fermented material prior to introduction into the distilling system, such mingling must be made prior to the testing of the material for alcoholic strength. Where such brandy is transferred to the charger or sump after the calculated yield has been determined, the actual quantity of

brandy in proof gallons so transferred will be reported separately as calculated yield. Brandy received for redistillation may be treated in any manner during the course of redistillation, provided such treatment is included in the statement of process filed pursuant to § 221.180. Different types of brandy received for redistillation must be redistilled separately or with distilling material of, or produced from, the same type as that from which the brandy was originally produced: *Provided*, That such restrictions shall not apply to brandy which is to be redistilled and branded as "Neutral Spirits-Fruit" or "Spirits-Fruit" and which is not to be withdrawn (and may not under any circumstances be withdrawn) for use in wine production. Such brandy may not be redistilled at a proof lower than that specified for the class and type at which originally produced. Where brandy for redistillation is on hand at the time the distillery is qualified for alternate operations as an industrial alcohol plant or registered distillery, such brandy will be gauged and held in closed locked tanks until the distillery requalifies as a fruit distillery, as provided for in this part.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.467 *Deficiencies in redistillation*. Deficiencies which occur during the redistillation of brandy received for that purpose will be treated the same as those which occur during the process of original distillation. In any case where the deficiency in redistillation of any particular lot or lots of brandy exceeds that which may be attributed to normal redistillation deficiencies, the distiller will submit explanatory statements relative to such deficiencies with Form 15. The storekeeper-gauger will make proper inquiry and appropriate investigation to determine the cause thereof.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.468 *Deposit in receiving tanks*. Upon completion of redistillation of brandy received for that purpose, the redistilled brandy shall be treated the same as if such brandy was originally produced by the redistiller and deposited in the receiving tanks in accordance with the requirements of § 221.382. Where such brandy was redistilled separately, a comparison of actual and calculated yield will be made in accordance with the provisions of § 221.383. Such brandy shall be withdrawn from the receiving tanks in the same manner as other brandy originally produced at the distillery and may be withdrawn for any of the purposes authorized by this part.

(68A Stat. 634; 26 U. S. C. 5194)

REMOVALS FOR REDISTILLATION

§ 221.469 *Gauge of brandy*. Upon receipt of application, Form 236, and the copy of the special application authorizing removal, the distiller, when he desires to make shipment, will give a copy of Form 236, furnish a complete description of the brandy to be shipped and exhibit the approved application to the storekeeper-gauger. Where the brandy is removed to a contiguous distillery by pipeline, it may be gauged in

weighing tanks either before removal or upon receipt. The storekeeper-gauger will verify the information shown on Form 236 with the corresponding information on the application. He will prepare his report of gauge on Form 1520. An original and four copies will be prepared for intraregion shipments and an original and five copies for interregion shipments. The marking of containers will be made in accordance with §§ 221.549-221.556 insofar as applicable, and in addition to required transfer-in-bond markings for containers of brandy removed for redistillation, there will be stenciled thereon the words, "For Redistillation." The storekeeper-gauger will note on all gauge reports covering removal of brandy for redistillation the words, "For Redistillation," followed by the serial number and date of the special application authorizing such removal. Brandy may not be removed for redistillation until the proper authorization has been received at the consignor premises and exhibited to the storekeeper-gauger in charge who will determine that the quantity of brandy to be removed does not exceed the maximum stated in any particular application on Form 236 or the related special application, and, where previous removals have been made under the same special application, that the total of such removals are not in excess of the maximum quantity authorized by the special application. Forms 236 and 1520 will be disposed of in accordance with § 221.611 for intraregion transfers and § 221.619 for interregion transfers.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.470 *Records.* Brandy removed from a fruit distillery to another distillery for redistillation shall be reported and accounted for by the proprietor on Form 15. In addition, there shall be entered on the line where each such entry for withdrawal is shown, the notation, "For Redistillation," followed by the serial number and date of the special application authorizing the transfer of the brandy for redistillation.

(68A Stat. 634, 637; 26 U. S. C. 5194, 5197)

SUBPART T—THE TAX ON BRANDY AND OTHER DISTILLED SPIRITS

§ 221.480 *Rate of tax.* The law imposes a tax on distilled spirits produced in or imported into the United States at the rate prescribed therein on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid when withdrawn from bond.

(68A Stat. 595; 26 U. S. C. 5001)

§ 221.481 *Attachment of tax.* Under the law, the tax attaches to distilled spirits as soon as such substance comes into existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(68A Stat. 595; 26 U. S. C. 5001)

§ 221.482 *Persons liable for tax.* The law provides that every proprietor or

possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(68A Stat. 595, 599; 26 U. S. C. 5001, 5005)

LIEN FOR TAX ON DISTILLED SPIRITS

§ 221.483 *Tax to be first lien.* Except as provided in § 221.485, the tax on distilled spirits becomes, under the law, a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land whereon said distillery is situated, and on any building thereon, from the time said spirits are in existence as such until the tax is paid: *Provided*, That where spirits are removed for redistillation, the consignee distiller shall assume the liability for payment of the tax as to such spirits from the time they leave the internal revenue bonded warehouse or distillery, and the tax liability on the producing distiller or the warehouseman, and the liens on the premises of the producing distiller shall cease, and the tax and liens shall become the liability of the consignee distiller. Upon redistillation of such spirits, the redistilled spirits shall be treated the same as if the spirits had been originally produced by the redistiller and all prior obligations as to taxes and liens shall be superseded.

(68A Stat. 595, 598, 634; 26 U. S. C. 5001, 5004, 5194)

§ 221.484 *Assessments become lien.* Except as provided in § 221.485, all assessments made as the result of examination of the distiller's monthly return, become a lien from the time the assessment is made until the same shall have been paid, on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon.

(68A Stat. 600; 26 U. S. C. 5007)

§ 221.485 *Exemption from lien.* No lien attaches to any lot or tract of land, distillery, building, or distilling apparatus by reason of distilling done during any period included within the term of any bond taken on Form 3-A, pursuant to § 221.165.

(68A Stat. 598; 26 U. S. C. 5004)

§ 221.486 *Extinguishment of lien.* Any lien under section 5004 (a) (1), I. R. C., on any land, or any building thereon, shall be held to be extinguished if (a) such land and building are no longer used for distillery purposes, and (b) there is no outstanding liability for taxes or penalties imposed by law on the distilled spirits produced therein, and (c) no litigation is pending in respect to any such tax or penalty.

(68A Stat. 598; 26 U. S. C. 5004)

§ 221.487 *Certificate of discharge of lien.* Any person claiming any interest in any such land or building may apply to the assistant regional commissioner for a duly acknowledged certificate to the effect that such lien is discharged

and, if the assistant regional commissioner determines that any such lien is extinguished, he shall issue such certificate, and any such certificate may be recorded.

(68A Stat. 598; 26 U. S. C. 5004)

SUBPART U—WITHDRAWAL OF SAMPLES OF BRANDY

TAX-FREE SAMPLES FOR LABORATORY ANALYSIS

§ 221.495 *Unfinished brandy.* Upon approval by the storekeeper-gauger in charge at the distillery, or by the assistant regional commissioner when no storekeeper-gauger is assigned to the distillery, of an application submitted in accordance with the provisions of § 221.500 or § 221.501, the distiller may remove for laboratory analysis samples of brandy in the course of distillation and prior to the deposit in receiving tanks as shown in paragraphs (a), (b), and (c) of this section:

(a) Samples, not exceeding three pints in the aggregate, of the product of each still in a distilling unit in each 24-hour period;

(b) Where a discontinuous or batch still is operated, samples not exceeding three pints in the aggregate, of the product of each batch distilled;

(c) Where the distiller desires to obtain spot-samples from various plates of a still in the course of distilling a day's production, samples, not exceeding one quart in the aggregate, from each of the various plates.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.496 *Finished brandy.* Upon approval by the storekeeper-gauger in charge at the distillery, or by the assistant regional commissioner when no storekeeper-gauger is assigned to the distillery, of a written application filed in accordance with the provisions of § 221.500 or § 221.501, the distiller may remove for laboratory analysis samples of brandy from receiving tanks and tanks or packages in the brandy deposit room. Such samples shall not exceed:

(a) One quart in the aggregate, in any 24-hour period from any receiving tank;

(b) One quart from any filling of a tank in the brandy deposit room; and

(c) One pint from any package stored in the brandy deposit room.

Provided, That, when a receiving tank is filled and emptied and filled again in the same 24-hour period, samples, not to exceed 1 quart in the aggregate, may be taken from each filling of such receiving tank.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.497 *Size and number.* The size and number of samples of unfinished brandy, must be restricted to the minimum necessary for the purpose for which intended. The withdrawal of tax-free samples in excess of these limitations for laboratory analysis shall not be permitted unless it is shown that such samples are insufficient for the purpose intended and the assistant regional commissioner, upon receipt of a written application filed in accordance with the

provisions of § 221.501, authorizes the taking of additional samples.

(68A Stat. 667; 26 U. S. C. 5215)

§ 221.498 *Disposition of samples.* Tax-free samples must be used solely for laboratory analysis. Such samples may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where brandy is sold subject to approval as to quality, a sample taken pursuant to the provisions of §§ 221.496, 221.497 and 221.500-221.505 may be furnished the purchaser. Remnants or residues of tax-free samples remaining after analysis and which are not desired to be retained as laboratory specimens or for further analysis or examination should be returned to the vessels in the distilling system, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are unsuitable for return to the distilling system, they should be destroyed.

(68A Stat. 667; 26 U. S. C. 5373)

TAX-PAID SAMPLES FOR OTHER THAN LABORATORY ANALYSIS

§ 221.499 *Unfinished and finished brandy.* Upon approval by the storekeeper-gauger in charge at the distillery of an application submitted in accordance with the provisions of § 221.500, the distiller may take samples of brandy in the course of distillation in the distillery, or from the receiving tanks, or from tanks or packages in the brandy deposit room, for other than laboratory analysis, subject to payment of tax on the quantity so removed. Such samples must be used strictly for sample purposes, and the number and size of the samples must be restricted to that necessary for bona fide sample purposes.

(68A Stat. 614; 26 U. S. C. 5061)

GENERAL REQUIREMENTS

§ 221.500 *Application to the storekeeper-gauger in charge.* When the distiller desires samples of brandy which, under the provisions of §§ 221.495, 221.496, and 221.499, may be authorized by a storekeeper-gauger and one is assigned to the premises, application in triplicate shall be submitted to that officer. The application shall be given a serial number beginning with "1" for the first application and running consecutively thereafter. The application should specify whether the samples are desired for laboratory analysis tax-free or for other purposes subject to payment of tax, the reasons why the samples are desired, the number and size of the samples to be taken, and the place or places of removal. Where it is desired to take samples from the distillery regularly for laboratory analysis, except spot-samples from the plates of a still, the application may be made for that purpose. Where spot-samples from the plates of a still or samples subject to payment of tax are desired, the application shall be submitted each day such samples are to be procured. No samples may be taken until the application is approved.

(68A Stat. 614, 667; 26 U. S. C. 5061, 5373)

§ 221.501 *Application to the assistant regional commissioner.* When samples similar to those described in § 221.500 are desired and no storekeeper-gauger is assigned to the premises, or where the distiller desires tax-free samples in excess of the limitations imposed by the provisions of §§ 221.495 and 221.496, the distiller shall make application, in triplicate, to the assistant regional commissioner. The application shall be given a serial number within the series prescribed in § 221.500 and shall show the information required by such section. The application for tax-free removals in number or quantity in excess of the limitations provided in §§ 221.495 and 221.496 must show the necessity for the additional samples. No samples may be taken until the application is approved.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.502 *Approval of application by the storekeeper-gauger in charge at the distillery.* Upon receipt of an application submitted in accordance with the provisions of § 221.500, the storekeeper-gauger must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application. The storekeeper-gauger upon approval or disapproval of an application, shall return one copy to the distiller, forward one copy to the assistant regional commissioner, and retain the original copy in his office.

(68A Stat. 614, 667; 26 U. S. C. 5061, 5373)

§ 221.503 *Approval of application by the assistant regional commissioner.* Upon receipt of an application submitted in accordance with the provisions of § 221.501, the assistant regional commissioner must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application, and shall note upon each copy his approval or disapproval. If the application is approved he shall file a copy and furnish the original and remaining copy to the internal revenue officer assigned to supervise the withdrawal of the samples. At the time samples are withdrawn the internal revenue officer shall file the original copy of the application at the distillery and furnish the distiller the remaining copy. If the application is disapproved, the assistant regional commissioner shall file the original copy and return the remaining copies to the distiller.

(68A Stat. 614, 667; 26 U. S. C. 5061, 5373)

§ 221.504 *Removal of samples.* Samples of brandy may be taken by means of mechanical sampling devices which will either (a) record the total quantity of brandy withdrawn, without recording the number or size of individual samples, or (b) record the number of samples withdrawn, which samples would, by the construction of the device, be restricted as to size (e. g., one-half pint, pint, etc.). All samples, except samples taken by means of approved mechanical sampling devices must be taken under the immediate supervision of the storekeeper-gauger assigned to the dis-

tillery. When there is no internal revenue officer assigned to the distillery and the application is transmitted to the assistant regional commissioner pursuant to the provisions of § 221.501, the assistant regional commissioner shall authorize the taking of the samples at such time as officers visit the distillery to gauge brandy, make inspections, or for other purposes.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.505 *Label.* At the time of the withdrawal of a sample the proprietor shall prepare a label and a copy thereof. The label and the copy shall be prepared on paper having approximate dimensions of 3" x 5". The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the information required in paragraphs (a) to (i) of this section:

- (a) The word "Sample";
- (b) The serial number of the approved application covering the withdrawal of the sample;
- (c) The kind of brandy;
- (d) The place from which the sample was removed;
- (e) The name of the distiller followed by the registered number of the distillery and the name of the State in which located;
- (f) A statement showing the purpose for which the sample is intended;
- (g) The size of the sample and the quantity in proof gallons extended to the fourth decimal place;
- (h) If the sample is to be analyzed or used at other than the immediate or contiguous premises of the proprietor, the name and address of the laboratory or purchaser to which the sample is to be sent; and
- (i) Whether the sample is "Taxfree" or "Subject to tax."

The proprietor shall affix the label to the sample container and deliver the copy to the storekeeper-gauger for filing. The copy of the label shall be filed by the storekeeper-gauger in accordance with the provisions of § 221.506. The distiller shall not be required to affix red strip stamps to containers of taxable samples of brandy.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.506 *Office record.* The proprietor shall furnish sufficient file cases for the filing and retention of sample records. The copies of labels shall be kept by the storekeeper-gauger as a record of samples removed, and shall be filed numerically by application number and chronologically by date. Where mechanical sampling devices are installed the storekeeper-gauger shall maintain such memorandum records as are necessary to account for recorder readings on the sampling devices. If the distiller operates an internal revenue bonded warehouse on or contiguous to the distillery premises, the record of samples removed from the distillery shall be maintained separately from the record of samples removed from the warehouse.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.507 *Report of taxable samples.* Each day taxable samples of brandy are withdrawn, the storekeeper-gauger shall

enter on Form 1615, in quadruplicate, a record of the taxable samples removed. All the information called for by the form shall be furnished. At the end of each month, the storekeeper-gauger shall complete the report, retain one copy of the form, and deliver the remaining three copies to the distiller, who shall forward the three copies to the district director of internal revenue with remittance for the tax due. The district director of internal revenue shall execute his certificate of taxpayment on each copy of the form, retain one copy, and return the remaining two copies to the distiller, who will retain one copy and deliver the other copy to the storekeeper-gauger. The storekeeper-gauger shall note the tax payment on his retained copy and forward the other copy to the assistant regional commissioner.

(68A Stat. 614; 26 U. S. C. 5061)

SUBPART V—TAXPAYMENT, REMOVAL, AND TRANSFER OF BRANDY FROM DISTILLERY

REMOVALS FROM RECEIVING TANKS

§ 221.515 *For transfer to internal revenue bonded warehouses.* Brandy may be removed to internal revenue bonded warehouses as follows:

(a) At any proof:

(1) By pipeline direct to tanks in the internal revenue bonded warehouse located on the distillery premises;

(2) In approved containers other than by pipeline for deposit in any internal revenue bonded warehouse for storage in such approved containers;

(3) In wooden packages, each containing two or more metallic cans having a capacity of not less than 5 wine gallons each, for the purpose of exportation only.

(b) At 160 degrees or more of proof (without or subsequent to reduction to not less than 160 degrees of proof):

(1) By pipeline direct to tanks in an internal revenue bonded warehouse contiguous to the distillery premises; and

(2) In tank cars or tank trucks to any internal revenue bonded warehouse for deposit in tanks therein.

(c) Wine spirits may be removed by tank car, tank truck, or by pipeline to any internal revenue bonded warehouse for deposit in tanks therein.

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

§ 221.516 *For temporary storage in brandy deposit room.* Brandy may be placed in the brandy deposit room for temporary storage, pending removal from the distillery, as follows:

(a) In approved containers; and

(b) In storage tanks.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.517 *For transfer to bonded wine cellars.* Wine spirits for use in wine production may be removed in approved containers to any bonded wine cellar.

(68A Stat. 634, 640, 667; 26 U. S. C. 5194, 5215, 5373)

§ 221.518 *For exportation.* Brandy of any proof may be removed in tank cars free of tax for exportation. Brandy of any proof may be removed to an internal revenue bonded warehouse in wooden

packages, each containing two or more metallic cans having a capacity of not less than 5 wine gallons each, for exportation only.

(68A Stat. 633, 640, 647; 26 U. S. C. 5193, 5215, 5247)

§ 221.519 *For redistillation.* Brandy of any proof may be removed for redistillation in accordance with § 221.460. Such brandy may be removed in approved containers to any registered distillery or registered fruit distillery.

(68A Stat. 634, 640; 26 U. S. C. 5194, 5215)

§ 221.520 *Upon taxpayment.* Brandy, upon taxpayment, may be removed in approved containers.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.521 *Proof of brandy.* Brandy, as defined in these regulations, may be produced, warehoused, and withdrawn at any desired proof. All packages of brandy must be marked and branded as to kinds (class and type) in accordance with §§ 221.553 to 221.555.

(68A Stat. 633, 647; 26 U. S. C. 5193, 5247)

§ 221.522 *Prompt removal required.* Brandy must be removed from receiving tanks at frequent intervals when a storekeeper-gauger is present to gauge the same. Receiving tanks are not intended to be used for storage purposes and the retention of brandy in such tanks for an indefinite period will not be permitted. Since the brandy produced is not gauged until it is drawn from the receiving tanks, it is necessary that prompt action in this respect be taken to determine the liability of the distiller for taxes which, under the law, immediately attach to all brandy produced.

STORAGE IN AND REMOVAL FROM BRANDY DEPOSIT ROOM

§ 221.523 *Storage.* Unless the brandy produced is tax-paid or transferred to a fruit or registered distillery or internal revenue bonded warehouse or bonded wine cellar immediately upon being drawn from the receiving tanks and gauged, it must be temporarily stored in the brandy deposit room pending such disposition. However, where brandy is drawn into packages from receiving or storage tanks in the brandy deposit room, the packages must be removed from such room on the same day they are filled, or before other packages are filled therein, unless a separate room is provided in the brandy deposit room in accordance with the provisions of § 221.91, and all packages retained for temporary storage are placed in such room.

§ 221.524 *Other use.* When no brandy is stored in the brandy deposit room, the distiller may be permitted to use the room for other authorized purposes.

§ 221.525 *Rooms to be locked.* The brandy deposit room and the filled package storeroom, if any, must be kept securely locked at all times while brandy is stored in such rooms, except when necessary to be open for the receipt or removal of brandy. The entrance door of the brandy deposit room and of the filled package storeroom, if any, must

each be secured with a seal lock, the key to which will at all times be retained in the custody of the storekeeper-gauger, if any, assigned to the distillery, or the assistant regional commissioner or other internal revenue officer designated by him. All manheads, inlets, outlets, or other openings of receiving and storage tanks in the brandy deposit room must likewise be secured with Government locks while brandy is contained therein.

§ 221.526 *Removal.* Brandy placed in the brandy deposit room or in the filled package storeroom, if any, must be taxpaid or removed to a fruit or registered distillery or to an internal revenue bonded warehouse or to a bonded wine cellar on or before the 10th day of the month following that in which it was produced, as provided in § 221.528. Removals of brandy from the brandy deposit room will be in accordance with the provisions of § 221.515 (except paragraph (a) (3)) and §§ 221.517, 221.519, and 221.520.

(Sec. 2, act of March 3, 1877)

§ 221.527 *Use of brandy deposit room.* The brandy deposit room must be used exclusively for the deposit and temporary storage of brandy, or distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil to be removed for denaturation, or both brandy and such distillates, except that when the room is not devoted to such use, or when all brandy therein is in a separate locked room as provided in § 221.523, the Government locks may be removed from the doors and other openings thereof and the distiller permitted to use the room for other authorized purposes. When the brandy deposit room is used for other purposes, the door, if any, connecting such room with the receiving room must be kept closed and locked, unless the distillery operations have been suspended pursuant to notice on Form 124, as provided in Subpart Z of this part, and all spirits have been removed from the receiving room.

TIME OF REMOVAL FROM DISTILLERY

§ 221.528 *Date tax is due.* The tax on all brandy produced is due and payable on the 10th day of the month following the month of production, unless removed for deposit in an internal revenue bonded warehouse, or for transfer to a bonded wine cellar, or for transfer to a distillery for redistillation, or removed for exportation on or before such date.

(Sec. 2, act of March 3, 1877)

§ 221.529 *Request for assignment of officer.* Where a storekeeper-gauger is not assigned regularly to a distillery, the distiller shall request the assistant regional commissioner to assign an officer to gauge the brandy produced in ample time to permit removal on or before the 10th day of the following month. Upon receipt of such request the assistant regional commissioner will promptly assign an officer to gauge the brandy.

§ 221.530 *Assessment of tax.* The removal to a bonded warehouse or bonded wine cellar of brandy on which the tax is overdue will not be permitted, unless

the failure to gauge and remove the brandy on or before the 10th day of the month following the month of production is due to no fault of the distiller. Where the distiller fails to provide proper facilities for gauging, or to make a timely request as provided in § 221.529 for the assignment of a storekeeper-gauger to gauge the brandy, an assessment will be made for the tax found due, in accordance with the prescribed procedure, unless it is immediately paid to the district director of internal revenue by the distiller.

(68A Stat. 767; 26 U. S. C. 6201)

CONTAINERS

§ 221.531 *Packages.* Brandy may be drawn from receiving tanks, or from storage tanks in the brandy deposit room, into casks, barrels, or similar wooden packages, or into drums or similar metal packages, having a capacity of not less than 10 wine gallons each. The construction of wooden packages for exportation as provided by § 221.515 (a) (3), and the filling, marking, and branding thereof, must conform to the requirements of §§ 221.534-221.538.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.532 *Tank cars.* Brandy may, as provided in §§ 221.515 and 221.517-221.520, be drawn into tank cars for removal, but only in case the premises of the distiller and of the consignee are equipped with suitable railroad siding facilities. Where brandy is to be warehoused in tank cars, a railroad siding must extend into the receiving warehouse.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.533 *Tank trucks.* Brandy may, as provided in §§ 221.515 and 221.517-221.520, be drawn into tank trucks for removal, but only in case the premises of the distiller and of the consignee are equipped with suitable facilities for handling tank truck shipments. Where brandy is to be warehoused in tank trucks suitable facilities must be provided for tank trucks inside the warehouse.

(68A Stat. 634; 26 U. S. C. 5194)

WOODEN PACKAGES CONTAINING METALLIC CANS

§ 221.534 *Kind and construction of packages.* The wooden packages for exportation provided for by § 221.515 (a) (3), shall be substantially and securely constructed of clear, dressed lumber, and one side of each such package, to be known as the Government side, must be reserved for the marks and brands prescribed by § 221.538 and the export stamp required by part 225 of this title. The Government side must present a smooth and unbroken surface, and may consist of two or more pieces fitted closely together. The wooden packages shall be secured by metal straps or heavy wires, in addition to being securely nailed.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.535 *Notice by distiller.* Whenever brandy is to be exported in wooden packages, each containing two or more metallic cans, the distiller shall file with

the storekeeper-gauger a written notice, stating the number of cans which he desires to have filled for this purpose.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.536 *Packages to be weighed before filling.* The empty packages shall be weighed immediately preceding the filling of same. In determining the weight (tare) of the package, the metallic cans contained therein as well as the wooden case shall be weighed. The combined weight of the metallic cans and the case shall be the tare or weight to be marked on the empty package.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.537 *Filling of cans.* Upon receipt of the notice from the distiller pursuant to § 221.535 the storekeeper-gauger will supervise the filling of the metallic cans from the receiving tank. After the packages have been filled they will be reweighed and the details of the gauge reported on Form 1520.

§ 221.538 *Marks and brands.* The name of the distiller or the person in whose name the brandy was produced, the registry number of the distillery, the city or town, and state in which the distillery is located, the kind of brandy, the serial number of the package, the date of filling, and the proof, proof gallons and tare determined at the time of filling will be plainly and durably stenciled on the Government side of the package in letters not less than one-half inch in height. In addition, when the brandy is to be withdrawn for transfer in bond to an internal revenue bonded warehouse located on a noncontiguous premise, there shall be marked on the Government side of the package data showing the transfer date and premises to which transferred as "Trans. Aug. 1, 1955—IRBW 4 N. Y." The marks will be shown in the following manner:

Serial No. 999
JOHN DOE DISTILLING CO.
No. 9, Rockland, Penna.
Filled Aug. 1, 1955
Brandy
T. -----
P. -----
P. G. -----
Trans. 8-1-55
IRBW 4—N. Y.

§ 221.539 *Deposit in warehouse.* After the packages have been filled, gauged, and marked as required by this subpart and recorded as required by § 221.770 they will be deposited in an internal revenue bonded warehouse for temporary storage pending their removal for exportation.

(68A Stat. 633; 26 U. S. C. 5193)

DRAWING OFF, GAUGING, AND REMOVAL OF BRANDY

§ 221.540 *Drawing off brandy.* When brandy is to be drawn from a receiving tank, the storekeeper-gauger will see that the valve in the pipeline controlling the flow of brandy into the tank and the valve in any connecting overflow pipeline are closed and locked before the brandy in the tank is reduced and proofed, and that such valves remain closed and locked until all brandy has been drawn from the tank. Whenever brandy is to be drawn from receiving

tanks or transferred into or out of other tanks secured with Government locks, the storekeeper-gauger will open and close the locks, but it shall be the duty of the distiller to manipulate the stopcocks or valves controlling the flow of brandy. The storekeeper-gauger is required to be present and personally supervise all such operations and to see that all such operations are properly performed in accordance with this part.

§ 221.541 *Gauging of brandy.* All brandy drawn from receiving tanks will be carefully gauged by the storekeeper-gauger by weighing and proofing the brandy in accordance with this subpart and the Gauging Manual (part 186 of this title), and the details thereof entered on the report of gauge, Form 1520. Entries shall be made as indicated by the headings of the various columns and lines and in accordance with the instructions printed on the form or issued in respect thereto and as required by this part. The storekeeper-gauger shall, in every instance, note on Form 1520 the proof of distillation of the brandy gauged. The proof of brandy shall be adjusted to a whole or complete degree before being removed from the receiving tanks in casks, barrels, or similar wooden packages or drums or similar metal packages. Where removals from receiving tanks are to be made in tank cars, tank trucks, or by pipe line, the brandy may be adjusted to a whole or complete degree of proof prior to gauge for removal or the brandy may be removed without such reduction. Where the proof of brandy removed in tank cars, tank trucks, or by pipe line, for taxpayment is not so adjusted to a whole or complete degree, the fractional degree of proof, if any, shall be determined to the nearest tenth, which shall be used in determining the taxable gallons in accordance with this part and Table 4 of the Gauging Manual. Where the proof of brandy removed in tank cars, tank trucks, or by pipe line, for purposes other than taxpayment, is not adjusted to a whole or complete degree, the proof shall be determined to the nearest tenth but shall be rounded to a whole degree in accordance with § 186.20 of this title (Gauging Manual) and such whole degree shall be the proof of removal: *Provided*, That, where the proprietor or the consignee so desires, the fractional proof may be stated as the proof of the brandy, and used in determining the proof gallonage, in lieu of the whole degree of proof. Where brandy is to be transferred in bond to an internal revenue bonded warehouse in a tank car or tank truck and the consignee desires to taxpay the brandy in the tank car or tank truck without regauge, the brandy shall be reduced to a whole degree of proof before being drawn into the tank car or tank truck, or the proof gallonage shall be determined by use of the fractional proof. In any such case the storekeeper-gauger shall make notation on Form 1520 that the spirits were reduced to a whole degree of proof or, if they were not so adjusted, the fractional degree of proof at which withdrawn. The brandy in the receiving tank must be thoroughly agitated before taking the proof. The

proof determined after such agitation will be regarded as the proof of brandy run into all packages filled from the receiving tank and all brandy removed by pipe line or in tank cars or in tank trucks. However, the proof of the brandy in the receiving tank will be checked several times while brandy is being drawn off. Brandy to be transferred by pipe line or in tank cars or tank trucks for shipment will be gauged as provided in § 221.542.

(68A Stat. 599, 633, 634, 639; 26 U. S. C. 5006, 5193, 5194, 5212, 5245)

§ 221.542 *Weighing brandy removed by pipeline.* Brandy removed by pipeline must be weighed in weighing tanks before removal, except that where it is transferred by pipeline from the receiving tanks to a bonded warehouse on the distillery premises, or to a bonded wine cellar on contiguous premises, or to a contiguous distillery for redistillation, and no weighing tank is provided in the producing distillery, the brandy may be run into weighing tanks in the bonded warehouse or the bonded wine cellar or the receiving distillery and weighed therein: *Provided*, That brandy to be removed in tank cars, tank trucks, or by pipeline for use in wine production may be gauged by volume where receiving tanks are accurately calibrated, and in the case of tank cars and tank trucks, accurate calibration charts prepared or certified by competent authorities, are immediately available. When the withdrawal gauge is on a volumetric basis the storekeeper-gauger will enter on Form 1520 depth measurements of receiving tanks, by which quantities were determined, together with the temperature of the brandy and the temperature correction factor used. Brandy transferred from distillery receiving tanks to storage tanks in the brandy deposit room, or from such receiving or storage tanks to tank cars or tank trucks, must be gauged as provided herein prior to such transfer. The storekeeper-gauger will balance the weighing tank scales before the brandy is run into the weighing tank.

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

§ 221.543 *Testing tank scales—(a) Not over 500 gallons.* Scales used for weighing brandy in lots of not over 500 gallons (where test weights have been provided in accordance with § 221.113) will be tested from time to time under the supervision of the storekeeper-gauger by means of such test weights. Such scales will be tested by placing the prescribed test weights on the scales and checking the weight registered on the beam of the scales. The test weights will then be removed without disturbing the beam and the weighing tank filled with brandy or water to the same weight, whereupon the test weights will again be placed upon the scales, the brandy or water being retained in the tank and the weight registered on the beam checked. This operation will then be continued until the scales have been checked in 500-pound ranges at all weights for which the scales are used.

(b) *Over 500 gallons.* Proprietors will have scales used for weighing brandy in

larger lots tested and their accuracy certified by State, county, or city departments of weights and measures or by a responsible scale company at intervals of not more than 6 months. Officers will see that the proprietors have the scales of weighing tanks, used for weighing brandy in lots of more than 500 gallons, tested and their accuracy certified by State, county, or city departments of weights and measures or by a responsible scale company, at intervals of not more than 6 months. Officers will also check, at least once a month, the gallonage represented to be on the scale against the gallonage indicated by a volumetric determination of the contents of the tank. Such volumetric determination will be made by (1) accurately ascertaining the proof and the temperature of the brandy and the depth of the liquid in the tank by means of a steel tape, (2) multiplying the depth in inches by the capacity of the tank for 1 inch of depth, and (3) correcting the volume to 60 degrees Fahrenheit in accordance with Table No. 7 of the Gauging Manual (part 186 of this title). The corrected gallons thus determined will be compared with the gallons represented by the reading of the beam of the scale. Unless the volumetric check is within 0.5 percent of the quantity shown to be in the tank, the internal revenue officer will take appropriate steps to have the accuracy of the scales verified. In addition to the volumetric check described, officers will, as frequently as conditions indicate the necessity therefor, test weighing tank scales of large capacity in the manner prescribed for smaller capacity weighing tank scales, except that such tests on large capacity weighing tank scales may be made when they contain considerable quantities of liquid. In this case the beam will be carefully balanced, and test weights will be added to the load, one at a time, until the range of 500 pounds is checked. At any time an officer finds a scale to be inaccurate, he will require the proprietor to have such scale adjusted and its accuracy certified.

(68A Stat. 639; 26 U. S. C. 5212)

§ 221.544 *For storage in brandy deposit room.* When brandy to be temporarily stored in the brandy deposit room is gauged, the storekeeper-gauger will prepare a report thereof on Form 1520, in triplicate, one copy of which will be forwarded to the assistant regional commissioner on the same day the brandy is gauged, one copy delivered to the distiller, and the remaining copy retained as a permanent record in the office of the storekeeper-gauger.

(68A Stat. 917; 26 U. S. C. 7805)

§ 221.545 *Upon withdrawal from storage tanks.* When brandy is transferred to storage tanks in the brandy deposit room after it has been gauged, it will be regauged as provided in §§ 221.541 and 221.542 upon removal.

(68A Stat. 633, 634, 639; 26 U. S. C. 5193, 5194, 5212)

§ 221.546 *Removal of packages from brandy deposit room.* When the brandy is drawn from the receiving tanks into

packages and temporarily stored in the brandy deposit room, as authorized in § 221.516 the packages need not be gauged upon removal, unless the storekeeper-gauger notes circumstances indicating that a package (or packages) has been tampered with, or has reason to believe that any package contains more spirits than shown by the original gauge, or materially less spirits, in which event a careful regauge will be made.

§ 221.547 *Report of gauge.* When brandy is gauged for removal to a bonded warehouse or bonded wine cellar, or upon tax payment, the storekeeper-gauger will prepare and dispose of the reports of gauge, Form 1520, as provided in this subpart.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.548 *Pipeline removals.* Pipelines used for the transfer of brandy from the receiving tanks to storage tanks in the brandy deposit room or bonded warehouse or to a bonded wine cellar or to a railroad tank car or tank truck for shipment, or from storage tanks in the brandy deposit room to a bonded warehouse or bonded wine cellar or to a tank car or tank truck for shipment, must conform to the requirements of § 221.130, except that brandy may be transferred into a tank car or tank truck by means of a hose connection. The valves on such pipelines shall be kept closed and locked at all times, except when necessary to be open for the transfer of spirits. Brandy may be transferred by pipeline only under the immediate supervision of the storekeeper-gauger.

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

MARKING, BRANDING, AND STAMPING OF PACKAGES

§ 221.549 *General.* Before weighing empty casks or packages, officers will examine them and will not permit the use of any cask or package which contains or has on its interior or exterior any substance that will prevent the correct ascertainment of tare. The tare of the empty package will be determined immediately preceding the filling of the same in all cases: *Provided, however*, The tare of a number of packages may be ascertained and marked thereon before any are filled but not exceeding the number which are to be filled the same day or the following day. If the barrels are not to be filled until the following day, they must be locked in the receiving or brandy deposit room after being weighed and marked. The tare or weight of the empty package will be marked on the package as soon as ascertained. All packages of brandy, when filled, shall be further marked and branded as provided by this subpart, and where such packages are tax paid, the prescribed stamps will be affixed thereto and cancelled in the manner prescribed in § 221.567.

(68A Stat. 633, 634, 639; 26 U. S. C. 5193, 5194, 5212)

§ 221.550 *Marking of packages filled in distillery.* All packages of brandy filled in the distillery shall be marked as follows:

(a) *Marks.* The name of the distiller or the person in whose name the brandy was produced, the registry number of the distillery, the city or town and State in which the distillery is located, the kind of cooperage, the serial number of the package, the kind of brandy, the date of filling, the proof at which distilled, the original proof gallons, the original proof and tare determined at the time of filling (and, if tax-paid in the distillery, the date of tax payment and serial number of the wholesale liquor dealer stamp), shall be marked upon the head of each package. In addition, when brandy is to be withdrawn for transfer in bond to an internal revenue bonded warehouse located on noncontiguous premises there shall be marked upon the head of the package data showing the transfer date and premises to which transferred as "Trans. Aug. 1, 1955—IRBW 4-N. Y." When brandy is removed to a noncontiguous bonded wine cellar for use in wine production, the head of each package shall be marked to show the date and purpose of the withdrawal, as "Withdrawn Aug. 1, 1955—For Use in Wine Production." The head of the package bearing these marks will be known as the "Government head."

(b) *Abbreviation of marks.* The registry number and State may be combined and abbreviated as "Calif-708." The kind of cooperage may be abbreviated "C" for charred, "REC" for recharred, "P" for plain, "PAR" for paraffined, "G" for glued, and "R" for reused (not recharred). In addition to these marks, the letters "PS" (pre-soaked) will follow the letters indicating the kind of cooperage if the barrel has been steamed or water soaked prior to filling.

(c) *Symbols for proof of distillation.* Symbols may be used to designate the proof of distillation, e. g., "D190P" for "Distilled 190 proof or over," "D170-190P" for "Distilled between 170 and 190 proof" and "D170P" for "Distilled not over 170 proof"; *Provided*, That brandy distilled between 140 and 170 proof, not reduced with water, and intended for use in wine production shall be marked "D140-170P."

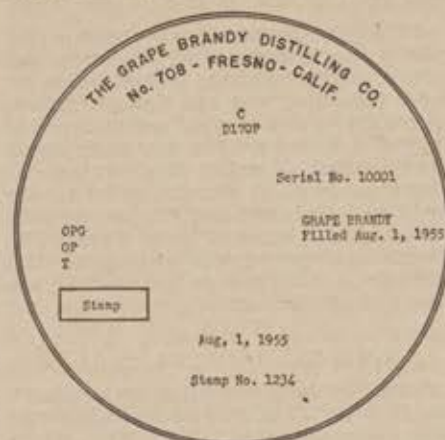
(d) *Method of marking.* All marks shall be plainly and durably burned, cut, imprinted, or stenciled on the head of each package. All marks, except the proof, proof gallons, tare and withdrawal data, shall be placed on the package in letters and figures of not less than $\frac{3}{4}$ inch in height. The proof, proof gallons, tare and withdrawal data and all marks in the case of half barrels, shall be in letters and figures of not less than $\frac{1}{2}$ inch in height. The ink used in applying marks and brands shall be of suitable quality to effect durability and legibility and the heads of the packages shall be sufficiently smooth and free from defects to permit the marks and brands to be clearly and distinctly applied.

(e) *Kind of brandy.* The kind of brandy shall be stated as "apple brandy, etc.," in accordance with §§ 221.553-221.555.

(f) *Other marks.* No marks other than those required by this part shall be placed upon the Government head of a package.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.551 *Illustration of marks and brands.* The following cut illustrates the order and manner in which the marks shall be applied to the head of each package upon filling and upon tax-payment. When brandy is transferred in bond or withdrawn free of tax, the required withdrawal information will be shown in lieu of the taxpayment data shown in the cut.



(68A Stat. 633; 26 U. S. C. 5193)

§ 221.552 *Numbering of packages.* Packages filled with brandy at the distillery shall be serially numbered, beginning with number 1 for the first package filled and continuing in regular sequence: *Provided*, That the series in current use at existing distilleries will be continued. Where packages are filled from storage tanks in the brandy deposit room they will be numbered in sequence to the packages filled from the receiving tanks. Where there is a change in the trade name or style, or in the proprietorship of the business, the series in use at the time of such change will be continued. A new series will be used where there is a change in the type of plant; but use of the prior series will be resumed when the plant is again operated as a fruit distillery. When the serial numbers of packages filled at any distillery have reached the number 1,000,000, the distiller may, if he so desires, begin a new series, commencing with number 1 preceded or followed by a letter to distinguish it from the prior series, as 1A, 2A, etc., and when the number 1,000,000, so distinguished, is again reached the distiller may begin another series distinguished by the second letter of the alphabet, as 1B, 2B, etc., and subsequent series, distinguished by other letters of the alphabet in order, may likewise be commenced.

(68A Stat. 633, 639; 26 U. S. C. 5193, 5212)

KINDS OF BRANDY

§ 221.553 *Brandy.* Spirits distilled solely from the fermented juice, mash, or wine of fruit, or from the residue thereof, distilled at less than 190 degrees of proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to brandy, shall be branded "Brandy," qualified as follows:

(a) *Brandy distilled at not exceeding 170 degrees of proof.* Brandy distilled at not exceeding 170 degrees of proof

solely from the juice or mash of whole, sound, ripe fruit, or from natural wine, specially sweetened natural wine, or standard agricultural wine made from dried fruit, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, not in excess of 0.20 gram per 100 cubic centimeters (20° C.), with or without the addition (to juice or wine only) of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation), is classed as fruit brandy and shall be branded as follows:

(1) *Grape brandy.* Fruit brandy derived exclusively from grapes, shall be branded "Grape Brandy" or "Brandy";

(2) *Peach brandy, apple brandy, etc.* Fruit brandy, other than grape brandy, derived exclusively from one variety of fruit, shall be designated by the word "Brandy," qualified by the name of such fruit (e. g., "Peach Brandy," "Apple Brandy," "Orange Brandy"), except that apple brandy may be designated "Applejack."

(3) *Fruit brandy.* Fruit brandy distilled from more than one variety of fruit shall be branded "Fruit Brandy," qualified by a statement of composition (e. g., "Fruit Brandy --% Grapes and --% Blackberries").

(b) *Dried fruit brandy.* Brandy that conforms to the standard for fruit brandy, except that it has been derived from sound dried fruit, or from standard agricultural wine, shall be branded as follows:

(1) *Raisin brandy.* Brandy derived from raisins, or from raisin wine shall be branded "Raisin Brandy."

(2) *Dried peach brandy, dried apple brandy, etc.* Other brandies derived from sound dried fruit, or from standard agricultural wine, shall be branded in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word "Dried."

(c) *Lees brandy.* Brandy distilled from the lees of natural wine, specially sweetened natural wine, or standard agricultural wine made from dried fruit, which are run into the still, shall be branded "Lees Brandy," qualified by the name of the fruit from which such wine and lees are derived (e. g., "Grape Lees Brandy").

(d) *Pomace brandy.* Brandy distilled from the skin and pulp of sound, ripe fruit which are run into the still, after the withdrawal of the juice or wine therefrom, shall be branded "Pomace Brandy," or "Marc Brandy," qualified by the name of the fruit from which derived (e. g., "Grape Pomace Brandy"). Grape pomace brandy may be designated as "Grappa" or "Grappa Brandy."

(e) *Residue brandy.* Brandy distilled wholly or in part (except as provided in paragraph (a) of this section) from the residue of fruit or wine shall be branded "Residue Brandy," qualified by the name of the fruit from which derived (e. g., "Grape Residue Brandy").

(1) *Optional branding.* Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in paragraphs (a),

(b), (c), and (d) of this section, may, regardless of such fact, be branded "Residue Brandy," qualified by the name of the fruit from which derived; but such designation shall be conclusive, precluding any later change of designation.

(f) *Neutral brandy.* Brandy distilled at more than 170 degrees of proof and less than 190 degrees of proof, shall be branded in the same manner as if distilled at a lower proof, except that the designation shall be qualified by the word "Neutral," e. g., "Neutral Brandy," "Neutral Grape Lees Brandy," or "Neutral Grape Pomace Brandy," "Neutral Peach Pomace Brandy," etc.

(g) *Substandard brandy.* Brandy distilled from juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20° C.), (the volatile acidity shall be calculated exclusive of water added to facilitate distillation), and brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material, shall be branded "Substandard Brandy" qualified by the name of the material from which derived.

(h) *Treatment with wood chips.* Brandy as defined in this section which in whole or in part is treated with wood chips through percolation or otherwise, during distillation or storage, shall be further marked, either by branding or stenciling, with the words "Treated with oak chips."

(i) *Burnt sugar or caramel.* Where burnt sugar or caramel is added to brandy, the letters "B. S. A." will be marked on the head of the package.

(68A Stat. 607, 633, 634; 26 U. S. C. 5025, 5193, 5194)

§ 221.554 *Neutral spirits—fruit.* All spirits distilled from fruit at or above 190 degrees of proof shall be branded "Neutral Spirits—Fruit." In the case of fruit neutral spirits produced for use in wine production, the words "Neutral Spirits—Fruit" branded on the package shall be followed by the name of the fruit from which produced. Such branding shall be in the following form: "Neutral Spirits—Fruit—Grape."

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.555 *Spirits—fruit.* Spirits distilled from fruit at less than 190 degrees of proof may be branded "Spirits—Fruit" in lieu of the designations prescribed by § 221.553 at the option of the distiller.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

ADDITIONAL REQUIREMENTS RELATING TO MARKING

§ 221.556 *Distiller to mark and brand packages.* The prescribed marks and brands peculiar to individual packages shall be placed upon the package by the distiller.

(68A Stat. 633; 26 U. S. C. 5193)

§ 221.557 *Mechanical labor and materials.* All mechanical labor pertaining to the gauging of packages of brandy at the distillery shall be performed by the distiller. All materials and facilities required in connection with the application of marks and stamps shall be furnished by the distiller, except the instruments for proofing the brandy.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.558 *Testing of scales.* The storekeeper-gauger shall balance the scales before weighing either empty or filled packages, and will frequently test, by means of test weights provided in accordance with § 221.113, the accuracy of such scales. During the process of weighing he shall personally verify the weight of each package and record it in the proper column of Form 1520. The storekeeper-gauger will not permit the use of any scales which upon testing are found to be inaccurate.

(68A Stat. 639; 26 U. S. C. 5212)

§ 221.559 *Proofing of brandy.* The storekeeper-gauger shall personally take the proof of all brandy gauged and enter the same on Form 1520. The storekeeper-gauger will follow strictly the instructions set forth in the Gauging Manual (Part 186 of this title) respecting the proofing of spirits, in order that the proof may be accurately determined. Official hydrometers for determining the proof of brandy are furnished storekeeper-gaugers by the Government. The use of other than official hydrometers by storekeeper-gaugers is prohibited.

(68A Stat. 639; 26 U. S. C. 5212)

§ 221.560 *Verification of marks and brands.* The storekeeper-gauger shall verify the tare, proof and proof gallons marked on the packages by comparison with his gauge report Form 1520, and shall satisfy himself of the accuracy and correctness of the marks and brands and stamps (if any).

§ 221.561 *Obliteration of stamps, marks, and brands on empty packages.* When packages of brandy are emptied, all stamps, marks, and brands required to be placed thereon must be completely effaced and obliterated. Where a portion of a stamp is cut out for submission to the assistant regional commissioner, when packages are dumped for rectification or for bottling without rectification, the remnant remaining affixed to the package must be completely effaced and obliterated when the package is emptied.

(68A Stat. 603; 26 U. S. C. 5010)

TAXPAYMENT IN PACKAGES

§ 221.562 *Application, Form 179.* Whenever the distiller desires to taxpay and remove brandy in packages from the distillery, he shall execute application therefor on Form 179, in triplicate. Where the brandy is to be removed from receiving or storage tanks the distiller shall state, in addition to other applicable data on the form, the maximum quantity to be removed. Separate applications shall be filed for the removal of brandy from receiving or storage

tanks. All copies of the application will be delivered to the storekeeper-gauger.

§ 221.563 *Gauge of packages.* If the brandy to be removed is in previously filled packages the storekeeper-gauger will, upon receipt of the application, inspect the packages but will not gauge the same unless the circumstances are such as to make it advisable, as provided in § 221.546. If the brandy is contained in receiving or storage tanks, it will be drawn into packages and gauged, marked, and branded. The details of the gauge will be entered by the storekeeper-gauger on Form 1520, in triplicate. Where the brandy is removed on the original gauge the storekeeper-gauger will copy the necessary details of such gauge on Form 1520, in triplicate. Two copies of Form 1520, accompanied by all copies of Form 179 with the storekeeper-gauger's report thereon duly executed, will be delivered by the storekeeper-gauger to the distiller. The distiller will enter the description of the packages in the space provided therefor on Form 179, if the application covers packages not filled at the time the application was executed.

(68A Stat. 634, 640; 26 U. S. C. 5194, 5215)

§ 221.564 *Taxpayment.* The distiller, upon receipt of Forms 179 and 1520 from the storekeeper-gauger will cancel, in accordance with the provisions of § 221.572 the necessary number of distilled spirits excise tax stamps, prescribed in § 221.579, in the exact amount of the tax due. He will then attach the cancelled stamps to one copy of Form 179 and submit all copies of Forms 179 and 1520 to the storekeeper-gauger. The storekeeper-gauger, after determining that the cancelled stamps are in the proper amount of the tax shown to be due, will further cancel and deface the stamps, and certify to their receipt and further cancellation, as provided in § 221.572.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.565 *Issuance of wholesale liquor dealer's stamps.* Upon receipt of Forms 179 and 1520 with the cancelled distilled spirits excise tax stamps in the full amount of the tax shown on the Form 179, the storekeeper-gauger will issue to the distiller a wholesale liquor dealer's stamp for each package reported on Form 1520, and enter on all copies of Form 1520 the serial number of the wholesale liquor dealer's stamp issued for each package. When issuing the stamps, the storekeeper-gauger will enter on each stamp and on the stub all the information called for and will affix his signature to each stamp. The storekeeper-gauger may affix his signature by the use of a facsimile stamp.

(68A Stat. 603; 26 U. S. C. 5010)

§ 221.566 *Removal of brandy.* The distiller will mark and brand the packages as provided by § 221.550 and affix the stamp as provided in § 221.567. The wholesale liquor dealer's stamp must be affixed to the Government head of the package on the left side, and except as provided in this section, on the right side opposite the stamp there will be marked

the serial number of the wholesale liquor dealer's stamp and the date of tax payment. These withdrawal marks may be waived by the assistant regional commissioner when packages of brandy are to be removed to a tax-paid bottling house or rectifying plant in the immediate vicinity of the distillery for prompt bottling or dumping for rectification where the establishments are owned by the proprietor of such distillery or a subsidiary or affiliate. When the packages have been marked and stamped, as required, they must be promptly removed from the distillery premises. After removal of the brandy, the storekeeper-gauger will execute his statement of the date of withdrawal on the three copies of Form 179, retain one copy each of Form 179 and Form 1520, deliver one copy of each to the distiller, and forward one copy of each, with the cancelled distilled spirits excise tax stamps, to the assistant regional commissioner.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.567 Affixing and canceling stamps. The stamps required by § 221.566 to be affixed by the proprietor will be securely affixed to the Government head of the package in such manner as to effectively prevent removal without mutilation. The stamp will be canceled immediately after it has been affixed to the barrel by imprinting with five parallel wavy lines across the stamp, the stencil for which shall be provided by the proprietor. The stamp will be covered with a protective coating of varnish, shellac, or lacquer which is sufficiently transparent to permit legibility of the markings on the stamp, except where the packages are to be transferred to contiguous premises and the coating is not required for protecting the legibility of the stamp. Such stamps must remain upon the packages until the brandy therein is emptied or drawn off.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

TAXPAYMENT FOR REMOVAL BY PIPELINE OR IN TANK CARS OR TANK TRUCKS

§ 221.568 Application, Form 179. Whenever the distiller desires to taxpay and remove brandy from the distillery by approved pipelines to contiguous premises, or in tank cars or tank trucks, he shall execute application therefor on Form 179, in quadruplicate. The distiller shall state, in addition to other applicable data on the form, the approximate quantity to be withdrawn and whether such removal will be by pipeline, tank car or tank truck. If the brandy is to be removed in a tank car or tank truck, the number thereof, and the name or symbols of the owner, shall also be stated on the Form 179. All copies of Form 179 shall be delivered to the storekeeper-gauger, whereupon such brandy will be run into a weighing tank and gauged for removal. The storekeeper-gauger shall enter the details of the gauge on Form 1520, in quintuplicate. The proof at which the brandy was distilled, and in the case of tank car or tank truck shipments, the number and name or symbols of the owner of the tank car or tank truck, shall be noted on Form 1520 by the storekeeper-gauger.

The storekeeper-gauger will execute his report on each copy of Form 179 and will return all copies thereof, with four copies of Form 1520 attached, to the distiller, who will enter in the space provided therefor on each copy of Form 179, the description of the brandy gauged.

(68A Stat. 600, 633, 634, 26 U. S. C. 5007, 5193, 5194)

§ 221.569 Methods of taxpayment. The tax on brandy to be removed by pipe line to a contiguous rectifying plant or tax-paid bottling house or to be removed in a tank car or tank truck will be paid by the distiller (a) by use of a certificate of taxpayment, Form 1595, issued pursuant to application on Form 1594, or (b) by use of distilled spirits stamps prescribed by § 221.579. Where brandy which is to be removed by tank car or tank truck is taxpaid by use of distilled spirits stamps, a wholesale liquor dealer's stamp will be issued by the storekeeper-gauger as provided for in § 221.573.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.570 Application for certificate of taxpayment, Form 1594. The distiller will forward all copies of Form 179, and Form 1520, with Form 1594, in duplicate, if the vendee is located in the same region and in triplicate if the vendee is located in a different region, accompanied by proper remittance for the tax, to the district director of internal revenue. Form 1594 will be appropriately modified to cover the transfer by pipeline or tank truck.

(68A Stat. 600, 634; 26 U. S. C. 5007, 5194)

§ 221.571 Certificate of taxpayment, Form 1595. The district director will issue Form 1595, appropriately modified in the case of pipeline transfers to show "For Removal by Pipeline", note the tax payment, including the serial number of the certificate, on all copies of Form 1520, and execute his certificate of tax payment on all copies of Form 179. The district director shall fill in all the required data in the blank spaces on the certificate, except those provided in the lower left corner for the verification of the storekeeper-gauger, and shall date and sign the certificate. This certificate is not negotiable and shall not be used for any spirits other than those described therein. The district director will enter on the original and the copy or copies of Form 1594 in the space provided, the serial number, date and amount of the certificate issued. The district director will retain one copy each of Form 179 and Form 1520 and the original copy of Form 1594, and will mail or deliver the certificate, Form 1595, and the original and remaining copies of Form 179 and Form 1520 to the distiller or his designated agent, in accordance with the distiller's request on Form 1594. Where the certificate, Form 1595, covers a removal of brandy to a consignee in the same region, the district director will send the copy of the application, Form 1594, to the assistant regional commissioner, and, in case the certificate, Form 1595, covers a shipment of brandy to a consignee located in a different region, the district director will send the remaining

copy of Form 1594 to the assistant regional commissioner of the region in which the consignee is located.

(68A Stat. 598, 634; 26 U. S. C. 5004, 5194)

§ 221.572 Use of distilled spirits stamps. Where brandy is to be taxpaid by use of distilled spirits stamps, the distiller, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger pursuant to § 221.568, will cancel the necessary number of stamps in the exact amount of the tax due by perforation as prescribed herein, or by legibly writing or stamping on each stamp with indelible (India) ink, his name, the registry number of the distillery, and the serial number of Form 179; for example, "John Doe Distilling Company, Fruit Distillery No. 63, New Jersey, Form 179, Serial Number -----." Prior to use in taxpayment, the distiller, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the Form 179 must not be entered on the stamp in advance of actual use in taxpayment. The assistant regional commissioner may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the distiller if adequate for identification; for example, "J. D. Dist. Co. FD 63-NJ-179 S/N -----." The distiller's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the distiller's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (a) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (b) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The distiller will then attach the stamps to one copy of Form 179 and 1520 and submit all copies of Form 179 and 1520 to the internal revenue officer. The internal revenue officer, after determining that the canceled stamps are in the proper amount of the tax shown due on the Form 179, will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp and will execute a certificate on all copies of Form 179 (using the certificate of the district director, properly modified) certifying to the receipt and further cancellation of stamps in the amount of tax due. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such copy of Form 179, and the accompanying copy of Form 1520, will be attached to the board on the weighing tank and remain thereon until the

brandy covered by such stamps has been removed. Where removal is to be by tank car or tank truck, the distiller will state on Form 179 the name and address of the vendee.

(68A Stat. 595, 614, 634, 681; 26 U. S. C. 5001, 5061, 5194, 5556, 5557)

§ 221.573 *Issuance of Wholesale Liquor Dealers' Stamp.* Where the tax on brandy to be removed by tank car or by tank truck has been paid by the use of distilled spirits excise tax stamps, as provided in § 221.572, the storekeeper-gauger, upon return of Forms 179 and 1520, will issue to the distiller a wholesale liquor dealers' stamp for the tank car or tank truck, as the case may be, and enter the serial number of the stamp on all copies of Form 1520. When issuing the stamp, the storekeeper-gauger will enter on the stamp and on the stub all the information called for and sign the stamp in the space provided therefor, using such ink as will neither fade nor blur. The storekeeper-gauger may affix his signature by the use of a facsimile stamp.

(68A Stat. 603; 26 U. S. C. 5061)

§ 221.574 *Route board.* Tank cars and tank trucks used for the transportation of tax-paid brandy must be equipped with a route board at least 10 by 12 inches in size, to which Form 1595 or a wholesale liquor dealer's stamp can be attached. Such board shall be of substantial material and shall be affixed permanently and securely to the tank car or tank truck by roundheaded or carriage bolts, nutted and riveted, battered, or welded.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.575 *Bill of lading.* The distiller shall incorporate in the bill of lading, if any, a description of Form 1595 as follows:

Form 1595, Serial No. _____
Owner and No. of Car (or Truck) _____
Vendor _____ Address _____
Vendee _____ Address _____

Where no bill of lading is issued, as in the case of transfer of a tank car between plants by switching arrangements, the distiller shall incorporate in Form 1520 such description of Form 1595. Where a wholesale liquor dealer's stamp is used in lieu of Form 1595, the distiller shall incorporate in the bill of lading, if any, a description of the stamp, showing the kind of stamp and its serial number.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.576 *Storekeeper-gauger's verification.* If taxpayment is by means of a certificate of taxpayment (Form 1595), the distiller shall give the certificate, the bill of lading, if any, and all copies of Form 179 and Form 1520 to the storekeeper-gauger at the distillery. The storekeeper-gauger will transcribe the serial number of the certificate, Form 1595, to his retained copy of Form 1520 and will verify the contents of the weighing tank and the description of Form 1595 in the bill of lading or on Form 1520, as the case may be, and will date and sign the certificate, Form 1595, in the space provided therefor. The certificate must be attached to a board on

the weighing tank. If taxpayment is by means of distilled spirits stamps and evidenced by a wholesale liquor dealer's stamp (tank car or tank truck removals only), the distiller shall give the bill of lading, if any, to the storekeeper-gauger at the distillery who will verify the description of the wholesale liquor dealer's stamp on the bill of lading, if any.

(68A Stat. 634; 26 U. S. C. 5194)

RELEASE OF BRANDY FOR TRANSFER

§ 221.577 *By pipeline to contiguous premises.* When the certificate of taxpayment, Form 1595, has been affixed to the weighing tank, in the case of pipeline transfers to contiguous premises, it will be canceled in the same manner as the stamp on a package. If taxpayment has been by means of distilled spirits stamps, in lieu of Form 1595, the copy of Form 179 to which the canceled stamps are attached and the accompanying Form 1520 shall be affixed to the weighing tank. The storekeeper-gauger will unlock the outlet valve and permit the distiller to transfer the brandy by pipeline to the contiguous premises. The brandy shall be transferred only under the immediate supervision of the storekeeper-gauger who, after release of the brandy will execute his statement of the date of withdrawal on the three copies of Form 179, forward one copy each of Form 179 and Form 1520 with the canceled Form 1595, or the canceled distilled spirits stamps, as the case may be, attached thereto, to the assistant regional commissioner, retain one copy of Form 179 and Form 1520, and deliver one copy of Form 179 and two copies of Form 1520 to the distiller. The distiller will deliver immediately one copy of Form 1520 to the storekeeper-gauger at the contiguous establishment.

(68A Stat. 600, 634; 26 U. S. C. 5007, 5194)

§ 221.578 *By tank car or tank truck.* When brandy is to be transferred to a tank car or tank truck for shipment the storekeeper-gauger shall unlock the outlet valve and permit the brandy to be transferred to the tank car or tank truck after the certificate of taxpayment or the Form 179 with the distilled spirits stamps attached thereto, has been affixed to the weighing tank. The brandy shall be transferred only under the immediate supervision of the storekeeper-gauger. If a certificate of taxpayment, Form 1595, is used, the distiller, upon deposit of the brandy in the tank car or tank truck, will remove the certificate from the weighing tank and affix it securely to the route board of the tank car or tank truck whereupon it will be canceled in the same manner as the stamp on a package and then covered with a coating of transparent shellac, lacquer or varnish. If distilled spirits stamps are used and a wholesale liquor dealer's stamp issued to evidence taxpayment, the wholesale liquor dealer's stamp shall be similarly affixed to the tank car or tank truck, canceled and protected. The storekeeper-gauger will verify the contents of the tank car or tank truck, release same for shipment, execute his statement of the date of withdrawal on the three copies of Form 179, and note

on all copies of Form 1520 the date of the release. When the tank car or tank truck is released, the storekeeper-gauger will forward one copy each of Form 179 and Form 1520 to the assistant regional commissioner, retain one copy of each form, and deliver one copy of Form 179 and two copies of Form 1520 together with the bill of lading, if any, to the distiller. Where distilled spirits stamps have been used to taxpay the brandy, the copy of Form 179 to which the canceled stamps are attached will be forwarded to the assistant regional commissioner. The distiller will forward immediately one copy of Form 1520 to the storekeeper-gauger at the vendee premises. Where the consignee is located in another region and the tax has been paid by use of distilled spirits excise tax stamps, the storekeeper-gauger will forward the remaining copy of Forms 179 and 1520 to the assistant regional commissioner of that region; where the vendee is located in the same region, the remaining copies of Form 179 and 1520 will be destroyed.

(68A Stat. 595, 634, 681; 26 U. S. C. 5001, 5194, 5556)

DISTILLED SPIRITS EXCISE TAX STAMPS

§ 221.579 *Purchase.* Distilled spirits excise tax stamps may be purchased in various denominations by the proprietor from the District Director of Internal Revenue of the district in which the distillery is located. The stamps may be purchased in advance of actual needs, in order to be readily available when needed. The stamps may not be purchased by one proprietor from another, nor may they, except in cases of emergency, be purchased from district directors of other districts. Distillers shall not sell or transfer stamps, except that they may (a) transfer such stamps to other premises operated by themselves as provided in § 221.582 pursuant to the prior approval of the assistant regional commissioner; or (b) return such stamps for redemption in accordance with § 221.583. Distilled spirits stamps for taxpayment of brandy as authorized by this part, used or unused, may not be purchased, sold, or possessed, except as specifically authorized by this part.

(68A Stat. 595, 614, 634, 830; 26 U. S. C. 5001, 5061, 5194, 6804, 6805)

§ 221.580 *Form 427-D.* With each purchase of stamps the distiller will submit to the district director Form 427-D, in triplicate, properly filled out. The district director will stamp the date of sale on all copies of Form 427-D, return one copy to the distiller with the stamps and send one copy to the appropriate assistant regional commissioner. The remaining copy of Form 427-D will be filed in the district director's office so that all purchases of stamps may be verified at any time. The district director will refuse to sell stamps when such form is not submitted.

(68A Stat. 600, 614; 26 U. S. C. 5007, 5061)

§ 221.581 *Remittance; delivery.* All orders for stamps must be accompanied by proper remittance in a sum equal to the value of the stamps. Unless the stamps are called for by the distiller or

his agent in person, they will be sent to him by ordinary mail, registered mail, or express, at the expense of the distiller. When the stamps are not called for in person the distiller will specify on Form 427-D the means (ordinary mail, registered mail, or express) by which he desires the stamps sent to him. If the stamps are ordered sent by ordinary mail, the distiller shall enclose with his order sufficient postage stamps, or a separate remittance to cover the postage. If the stamps are ordered sent by registered mail, the distiller shall include the postage and registry fee and any required registry surcharge, as provided by the postal laws and regulations. If the remittance is other than cash the sum to cover the postage, registry fee, or surcharge must not be included in the remittance covering the cost of the stamps. The local postmaster should be consulted relative to the amount of the registry fee and surcharge required. Stamps forwarded by express will be sent "collect."

(68A Stat. 600, 614, 777; 26 U. S. C. 5007, 5061, 6311)

§ 221.582 *Transfer to other premises.* A proprietor operating other plants on the same or contiguous premises may transfer stamps to such plants from time to time pursuant to prior approval of the assistant regional commissioner. When the distillery is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other premises in which the stamps could be used, he may transfer such stamps to such other premises for use thereat pursuant to prior approval of the assistant regional commissioner. If the premises to which the stamps are to be transferred is located in another region, the assistant regional commissioner granting authority to transfer the stamps will advise the assistant regional commissioner of the other region so that he may know that the receiving premises is entitled to receive the stamps. The latter assistant regional commissioner will also inform the internal revenue officer assigned to the receiving premises of the authority to receive the stamps. A report of all transfer of stamps must be made on Form 1697, as provided in § 221.586.

(68A Stat. 614; 26 U. S. C. 5061)

§ 221.583 *Redemption of distilled spirits excise tax stamps.* Distilled spirits excise tax stamps for taxpayment of brandy may be redeemed pursuant to section 6805, Internal Revenue Code.

(68A Stat. 830; 26 U. S. C. 6805)

§ 221.584 *Claim to assistant regional commissioner.* Distillers desiring to have distilled spirits stamps redeemed must make claim on Form 843 to the assistant regional commissioner. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the assistant regional commissioner establishing such destruction must accompany the claim.

(68A Stat. 830; 26 U. S. C. 6805)

§ 221.585 *Unredeemable stamps.* Distilled spirits stamps may not be redeemed while brandy on which the stamps can be used in taxpayment, remains on hand and while the distillery remains in a qualified status unless it is shown that the manner of taxpaying brandy thereat is such that the stamps may not be used. When a distillery is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other premises at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat in accordance with § 221.582. Notation of the transfer must be made on Form 1697 for both premises.

(68A Stat. 600, 614, 830; 26 U. S. C. 5007, 5061, 6805)

§ 221.586 *Distilled spirits stamp report, Form 1697.* The distiller shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at his distillery. Entries will be made thereon and the report submitted in accordance with the headings of the various lines and columns on the form and the instructions printed thereon or issued in respect thereto and as required by this part. When distilled spirits stamps are surrendered for redemption in accordance with §§ 221.583 and 221.584, or are transferred to, or received from other premises operated by the distiller, as authorized in § 221.582, a report thereof must be made on Form 1697, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the stamps were transferred or from which they were received.

(68A Stat. 600, 614, 830; 26 U. S. C. 5007, 5061, 6805)

§ 221.587 *Wholesale liquor dealer's stamp books.* Wholesale liquor dealer's stamps will be furnished by district directors to assistant regional commissioners upon request. Assistant regional commissioners will supply storekeeper-gaugers in charge of plants where such stamps are used with such quantities of stamps as may be required. When all the stamps in a book have been issued the storekeeper-gauger in charge will return the stub book to the assistant regional commissioner.

(68A Stat. 603; 26 U. S. C. 5010)

§ 221.588 *Record and report of wholesale liquor dealer's stamps.* Storekeeper-gaugers having custody of wholesale liquor dealer's stamps at fruit distilleries will keep a record of such stamps received and used on part 1 of Form 118, properly modified for the purpose, and as required by the instructions on the form and as issued in respect thereto. The record will be kept in bound form available for inspection by other internal revenue officers. The storekeeper-gauger will prepare his monthly report on part 2 of Form 118, properly modified, in duplicate, retain one copy and furnish one copy to the assistant regional commissioner.

(68A Stat. 603; 26 U. S. C. 5010)

DEPOSIT IN WAREHOUSE OPERATED BY THE DISTILLER ON THE SAME PREMISES

§ 221.589 *Gauge of brandy, Form 1520.* Where the distiller operates an internal revenue bonded warehouse on the distillery premises and brandy produced at the distillery is to be entered for deposit in such warehouse, the brandy shall, as authorized by §§ 221.515-221.520, be drawn into approved containers, gauged, marked, and branded, and then immediately deposited in such warehouse, or shall be run into a weighing tank, immediately gauged and transferred by pipeline into tanks in such warehouse: *Provided*, That where the distillery is not equipped with a weighing tank, the brandy may be transferred by pipeline to a properly equipped weighing tank in such warehouse, gauged, and immediately deposited in storage tanks in the warehouse, or removed for authorized purposes. The brandy will be transferred to the warehouse and deposited therein under the immediate supervision of the storekeeper-gauger. Where brandy intended for use in wine production is transferred into warehouse storage tanks, the words "For Use in Wine Production" must be plainly and legibly stenciled upon such tanks. The storekeeper-gauger will enter the details of the gauge on Form 1520, in triplicate, and will note on each copy of Form 1520 the proof at which the brandy was distilled and, if transferred to a warehouse tank, the serial number thereof. Upon completion of the form, the storekeeper-gauger will deliver all copies thereof to the distiller for the execution of his entry of the brandy for deposit.

(68A Stat. 598, 633, 634, 645; 26 U. S. C. 5004, 5193, 5194, 5242)

§ 221.590 *Distiller's entry for deposit.* The distiller's entry for deposit shall be executed in the following form:

(Date)

The distilled spirits described herein are hereby entered for deposit in Internal Revenue Bonded Warehouse No. _____, State of _____

(Distiller)

The entry shall be executed on the same date that the brandy is removed from the distillery. If brandy intended for use in wine production is transferred to storage tanks, the distiller shall make notation to that effect in connection with the entry for deposit. After execution of the entry the distiller shall return the three copies of Form 1520 to the storekeeper-gauger, who will retain the original copy as a permanent record of the deposit of the spirits in the warehouse, forward one copy to the assistant regional commissioner, and deliver one copy to the distiller.

(68A Stat. 633, 640, 645; 26 U. S. C. 5193, 5215, 5242)

§ 221.591 *Mixing of different brandies prohibited.* Brandy transferred by pipeline to an internal revenue bonded warehouse may not be deposited with other brandy in weighing or storage tanks except as authorized by Part 225 of this title.

(68A Stat. 645; 26 U. S. C. 5242)

§ 221.592 *Sufficiency of warehouse bond.* Where the bond covering the operation of an internal revenue bonded warehouse on the distillery premises is given in less than the maximum penal sum of \$200,000, as shown by the record furnished by the assistant regional commissioner pursuant to Part 225 of this title, the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of distilled spirits deposited in the warehouse, plus the tax liability on distilled spirits represented by all outstanding approved Forms 236 (§§ 221.596 and 221.613) is within the limits of the penal sum of the bond.

DEPOSIT IN WAREHOUSE OPERATED BY THE DISTILLER ON CONTIGUOUS PREMISES

§ 221.593 *Procedure.* When the distiller operates an internal revenue bonded warehouse on premises contiguous to the distillery premises, and the location of the warehouse is such that the storekeeper-gaugers assigned to the distillery and the warehouse are able to maintain the same supervision of the deposit in such warehouse of brandy produced at the distillery as is required in the case of the deposit in a warehouse on the distillery premises of brandy produced at such distillery, the distiller may deposit brandy in such contiguous warehouse in accordance with the procedure prescribed in § 221.589 for the deposit of brandy in an internal revenue bonded warehouse operated by the distiller on the distillery premises, except that where separate Government offices are maintained for the distillery and the warehouse an extra copy of Form 1520 will be prepared and one copy of such form will be filed in each Government office. When brandy is so deposited, the storekeeper-gauger assigned to the distillery will in each instance deliver directly to the storekeeper-gauger at the warehouse a copy of the Form 1520. The storekeeper-gauger supervising the warehouse will personally verify the number of containers and the quantity of brandy received for deposit. Where the brandy cannot be deposited under such direct supervision, the procedure prescribed in §§ 221.595-221.611 will be followed.

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

§ 221.594 *Sufficiency of warehouse bond.* Where the bond covering the operation of an internal revenue bonded warehouse on premises contiguous to the distillery premises is given in less than the maximum penal sum of \$200,000, as shown by the record furnished by the assistant regional commissioner pursuant to Part 225 of this title, and brandy produced at the distillery is deposited in such warehouse in accordance with the procedure prescribed in § 221.593, the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of distilled spirits deposited in the warehouse, plus the tax liability on distilled spirits represented by all outstanding approved Forms 236 (§§ 221.596 and 221.613) is within the limits of the penal sum of the bond.

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN SAME REGION, EXCEPT WAREHOUSE OPERATED BY DISTILLER ON CONTIGUOUS PREMISES

§ 221.595 *Application, Form 236.* Where brandy is to be transferred to and entered for deposit in an internal revenue bonded warehouse located off the distillery premises in the same region, and such warehouse is not operated by the distiller on premises contiguous to the distillery premises, the proprietor of the receiving warehouse shall execute an application for the transfer of the brandy on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle, and the type of conveyance. If the applicant desires to receive packages of brandy in sealed conveyances without weighing the packages at time of receipt he should indicate on part 1 of Form 236 that the packages are to be transferred in sealed conveyances by entering the phrase "Government-sealed conveyance." The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.596 *Storekeeper-gauger's certificate of sufficiency of warehouse bond.* Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the assistant regional commissioner pursuant to Part 225 of this title. If the bond is given in the maximum penal sum of \$200,000, he will certify to the sufficiency thereof on Form 236 and return all six copies of the form to the proprietor of the warehouse. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of brandy represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all six copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. The proprietor will forward all six copies of the approved Form 236 to the proprietor of the consignor-distillery. The proprietor of the warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the warehouse.

§ 221.597 *Brandy to be transferred.* When the distiller desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the brandy to be shipped.

§ 221.598 *Report of gauge.* Unless previously packaged, the brandy designated by the proprietor to be transferred will, as authorized by §§ 221.515 to 221.520, be drawn from the receiving or storage tanks into casks or packages, gauged, marked and branded, or into a weighing tank, gauged, and run by pipeline into a properly equipped tank car or tank truck, or into tanks located in a contiguous internal revenue bonded warehouse not operated by the distiller. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on five copies of Form 1520. If the packages to be transferred were previously filled the storekeeper-gauger will inspect them but will not regauge the same, unless the circumstances are such as to make a regauge advisable. Where packages previously filled are removed on the filling gauge, the storekeeper-gauger will prepare five copies of Form 1520, copying the details from the report of the filling gauge.

(68A Stat. 633, 634, 645; 26 U. S. C. 5193, 5194, 5242)

§ 221.599 *Sealed conveyances for packages.* Each conveyance used to transport packages of brandy in bond, which is to be sealed in order that the weighing of the brandy upon receipt at an internal revenue bonded warehouse will not be required, must be constructed in such a manner that all openings may be closed and secured by seals in order that access cannot be gained without showing evidence of tampering. Cap seals to be furnished by the Government will be used in sealing the conveyance and such seals will be affixed as soon as the vehicle is loaded. If the conveyance is not constructed in accordance with the provisions of this section, the storekeeper-gauger will notify the consignor proprietor that its use as a sealed conveyance cannot be authorized and, if distilled spirits are conveyed therein, that weighing of the packages at the consignee premises will be required. Under such circumstances, cap seals will not be applied to the conveyance.

(68A Stat. 681; 26 U. S. C. 5556)

§ 221.600 *Tank cars.* Each tank car used to transport brandy in bond must have permanently and legibly marked or painted thereon its number, capacity in gallons, and the name or symbols of the owner. The dome or manhole covers on all tank cars used for shipping brandy in bond shall be equipped with facilities for sealing with a cap seal when closed and the outlet valves and all other openings to or from the car shall be so constructed that they may be closed and securely fastened on the inside or sealed in a like manner.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.601 *Tank trucks.* Every tank truck used to transport brandy in bond, or for removal for use in wine production, must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cut-outs. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery from a compartment, by meter or otherwise, will not be permitted. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner, in letters at least four inches in height. If the tank truck consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A", "B", etc., and the capacity in wine gallons of each compartment must be marked thereon. Tank trucks shall be so constructed that the contents of each compartment will drain completely, even when the ground is not perfectly level. Suitable ladders and cat walks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.602 *Type of motor carrier.* Transportation by tank trucks shall be provided (a) by a motor carrier licensed under the Motor Carrier Act of 1935 or an applicable state law, or a private carrier employed by, or acting as agent for, a consignor or consignee, who is actively and regularly engaged generally in the legitimate business of transportation, who possesses adequate facilities to insure safe delivery at destination of any brandy transported by him, and who is approved by the assistant regional commissioner; or (b) by the consignor or consignee acting as a private carrier.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.603 *Bond; transportation by motor carrier.* Motor carriers, as defined in § 221.602, desiring to transport, in tank trucks, brandy in bond or for removal for use in wine production, must file with the assistant regional commissioner, a bond on Form 49, "Bond to Transport Specially Denatured or Tax-free Alcohol," modified to read "Bond to Transport Distilled Spirits". The penal sum of the bond shall be at the rate of \$75,000 for each tank truck and not more than \$200,000 for the total of all tank trucks used. The bond shall be

filed in triplicate, appropriately modified.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.604 *Bond; transportation by consignor or consignee.* A consignor or consignee, in order to transport brandy in bond, or to remove brandy for use in wine production, in tank trucks controlled and operated by such consignor or consignee, must file with the assistant regional commissioner, a bond on Form 49, properly modified, in the penal sum specified in § 221.603: *Provided*, That in lieu of filing such bond, the consignor distiller or consignee distiller or warehouseman may file consent to surety, Form 1533, on his bond, Form 30, Form 30½, or Form 1571, as the case may be, extending the terms thereof to cover the tax, together with penalties and interest for which he may become liable, on all brandy transported by him in tank trucks. If the transportation is by the consignor or consignee distiller and the maximum of his bond, Form 30 or Form 30½, is not sufficient when computed as set forth in § 221.603, an additional bond on Form 49 in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee warehouseman, and the maximum of his bond, Form 1571, is not sufficient when computed as set forth in § 221.603, an additional bond on Form 49 or on Form 1571, in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee proprietor of a bonded wine cellar, he may file a consent of surety on his bond, Form 700, and an additional bond on Form 49 in a sufficient penal sum to cover the additional liability.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.605 *Seals.* Cap seals, to be furnished by the Government, will be used for sealing the tank car or tank truck and such seals will be attached as soon as the car or truck is filled. The wire for attaching the seals will be furnished and affixed by the distiller under the direction of the storekeeper-gauger.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.606 *Inspection of tank car or tank truck.* Upon receiving an order to gauge brandy to be transferred in bond in a tank car or tank truck, the storekeeper-gauger at the distillery will inspect the car or truck to see that all openings may be sealed with cap seals when closed, and that the tank car or tank truck is in compliance with the requirements of this part, before permitting its use.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.607 *Filling of tank car or tank truck.* The tank car or tank truck must be filled in the immediate presence of the storekeeper-gauger. The pipeline from the distillery weighing tank to the tank car or tank truck must be in full view of the officer and must not be connected or used except in his presence. The officer will seal the car or truck as soon as it is filled. The officer will enter on Form 1520, covering the gauge of the brandy, the level of the brandy above or below

the full mark for each compartment, and the temperature of the brandy at filling; for example: "Filled 2 inches above full mark at 80 degrees F." In the case of tank trucks the officer will also enter on Form 1520 the name of the carrier, the number of the tank truck, the state license number of the truck, the driver's full name, and the driver's permit number and State issuing the same. The storekeeper-gauger will note on Form 236 the serial numbers of seals used on the tank car or tank truck.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.608 *Route board.* Tank cars and tank trucks used for the transportation of brandy in bond must be equipped with a route board conforming to the requirements of § 221.574.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.609 *Label to be attached.* When brandy is shipped in bond in a tank car or tank truck, a label dated and signed by the storekeeper-gauger showing that the brandy is shipped in bond and giving the name, registered number and location (city or town and State) of the distillery from which shipped, and the warehouse to which shipped, shall be securely attached to the route board where it may be readily examined by internal revenue officers. The label, which will be furnished by the distiller, will be in substantially the following form:

Shipped in bond by
CALIFORNIA GRAPE COMPANY
F. D. No. 80, Fresno, Calif.

to
SAN FRANCISCO-DOE WAREHOUSE COMPANY
I. R. B. W. No. 50, San Francisco, Calif.

(Date) (Storekeeper-gauger)
(68A Stat. 634; 26 U. S. C. 5194)

§ 221.610 *Distiller's entry for deposit.* When the brandy has been packaged, gauged for transfer by pipeline to tanks in a contiguous internal revenue bonded warehouse not operated by the distiller, or run into a tank car or tank truck and such tank car or tank truck sealed, the storekeeper-gauger will deliver the copy of Form 236 and the five copies of Form 1520 to the distiller. The distiller shall, on the same date that the brandy is to be removed from the distillery, execute on all six copies of Form 236, the description of the packages, tank car or tank truck, or pipeline transfer, and on all five copies of Form 1520, the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger who will release the brandy for shipment.

(68A Stat. 634, 645; 26 U. S. C. 5194, 5242)

§ 221.611 *Storekeeper-gauger's certificate of removal.* Upon removal of the brandy the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. If the transfer is to be made by sealed conveyance, the storekeeper-gauger will note on Form 236 in the space provided therefor the serial numbers of the cap seals used. He will retain one copy each of Form 236 and Form 1520, furnish one copy of each form to the distiller, forward one copy

of Form 236 to the assistant regional commissioner, and forward the original and two copies of each form to the consignee storekeeper-gauger. When shipment is made by truck, the original and two copies of Forms 236 and 1520 for the storekeeper-gauger in charge of the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger and handed to the person in charge of the truck for delivery to him. (68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN DIFFERENT REGION

§ 221.612 *Application, Form 236.* Where brandy is to be entered for deposit in an internal revenue bonded warehouse located in a different region than the distillery, the proprietor of the receiving warehouse shall execute an application for the transfer of the brandy on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle, and the type of conveyance. If the applicant desires to receive packages of brandy without weighing such packages at time of receipt he should indicate on part 1 of Form 236 that the packages are to be transferred in sealed conveyances by entering the phrase "Government-sealed conveyance." The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.613 *Storekeeper-gauger's certificate of sufficiency of warehouse bond.* Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the assistant regional commissioner pursuant to Part 225 of this title. If the bond is given in the maximum penal sum of \$200,000, he will certify to the sufficiency thereof on Form 236 and return all seven copies of the form to the proprietor of the warehouse. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of brandy represented by the Form 236, plus the quantity of spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all seven copies of the form direct to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. The proprietor will forward all seven copies of the approved Form 236 to the proprietor of the consignor-distillery. The proprietor of the warehouse will be responsible for all outstanding approved

Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the warehouse.

§ 221.614 *Brandy to be transferred.* When the distiller desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the brandy to be shipped.

§ 221.615 *Report of gauge.* Unless previously packaged, the brandy designated by the proprietor to be transferred will, as authorized by § 221.515, be drawn from the receiving or storage tanks into casks or packages, gauged, marked and branded, or into a weighing tank, gauged and run by pipeline into a properly equipped tank car or tank truck. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on six copies of Form 1520. If the packages to be transferred were previously filled the storekeeper-gauger will inspect them but will not regauge the same, unless the circumstances are such as to make a regauge advisable. Where packages previously filled are removed on the filling gauge, the storekeeper-gauger will prepare six copies of Form 1520, copying the details from the report of the filling gauge. (68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.616 *Sealed conveyance for packages.* If packages of brandy are to be transported in a sealed conveyance, in order that the weighing of the brandy upon receipt at an internal revenue bonded warehouse will not be required, such conveyance must be constructed and sealed as provided in § 221.599. (68A Stat. 917; 26 U. S. C. 7805)

§ 221.617 *Tank car and tank truck requirements.* If the brandy is to be transported in a tank car or tank truck such tank car or tank truck must be constructed, marked, inspected, filled, sealed, and labeled as provided in §§ 221.600-221.609. (68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 221.618 *Distiller's entry for deposit.* When the brandy has been packaged, or run into a tank car or tank truck and such tank car or tank truck sealed, the storekeeper-gauger in charge will deliver the copy of Form 236 and the six copies of Form 1520 to the distiller. The distiller shall, on the same date that the brandy is to be removed from the distillery, execute on all seven copies of Form 236 the description of the packages or tank car or tank truck to be transferred and on all six copies of Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge who will release the brandy for shipment. (68A Stat. 634, 645; 26 U. S. C. 5194, 5242)

§ 221.619 *Storekeeper-gauger's certificate of removal.* Upon removal of the brandy the storekeeper-gauger will ex-

ecute his certificate of gauge and removal on Form 236. If the transfer is to be made by sealed conveyance, the storekeeper-gauger will note on Form 236 in the space provided therefor the serial numbers of the cap seals used. He will retain one copy each of Form 236 and Form 1520, furnish one copy of each form to the distiller, forward one copy of each to the assistant regional commissioner-consignor and forward the original and three copies of Form 236 and the original and two copies of Form 1520 to the consignee storekeeper-gauger. When shipment is made by truck, the original and three copies of Form 236 and the original and two copies of Form 1520 for the consignee storekeeper-gauger will be sealed in an envelope addressed to that officer and handed to the person in charge of the truck for delivery to him. (68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

KINDS OF BRANDIES THAT MAY BE REMOVED FOR USE IN WINE PRODUCTION

§ 221.620 *Kinds.* Only wine spirits produced in accordance with the provisions of § 221.351 may be removed from a fruit distillery for use in wine production. (68A Stat. 667; 26 U. S. C. 5373)

REMOVAL OF WINE SPIRITS IN PACKAGES FOR USE IN WINE PRODUCTION

§ 221.621 *Application, Form 257.* Where it is desired to remove wine spirits in packages from a fruit distillery for use in wine production, application will be made by the proprietor of the bonded wine cellar on Form 257, and the application will be approved and forwarded to the distiller in accordance with the procedure set forth in part 240 of this title. (68A Stat. 667; 26 U. S. C. 5373)

§ 221.622 *Gauge of wine spirits.* The distiller, upon receipt of Form 257 will execute his description of the wine spirits to be gauged, on all copies of the form, and submit them to the storekeeper-gauger assigned to the distillery. Where no storekeeper-gauger is assigned to the distillery, the proprietor will request the assistant regional commissioner to assign an officer to gauge and release the wine spirits. If the wine spirits to be removed are contained in tanks, the designated packages will be filled, gauged, and marked and branded in accordance with § 221.550. If the packages were previously filled, they will be marked as required, and removed on the original gauge, unless a regauge is deemed advisable. The storekeeper-gauger will prepare five copies of the report of gauge, Form 1520, where the wine spirits are to be removed to a bonded wine cellar located in the same region, and six copies where the bonded wine cellar is located in another region. The storekeeper-gauger will attach one copy of Form 1520 to each copy of Form 257, except as provided in § 221.625, and will note on the extra copies of Form 1520 the name, registry number, and address of the bonded wine cellar to which the wine spirits are to be shipped. No greater quantity of wine spirits may

be gauged or withdrawn than stated in the application.

(68A Stat. 633, 634, 667; 26 U. S. C. 5193, 5194, 5373)

§ 221.623 *Distillery and bonded wine cellar on adjacent premises.* Where the distillery and bonded wine cellar are located on adjacent premises and Form 257 is filed for a single removal, the storekeeper-gauger at the distillery will transmit all copies of Form 257 with Form 1520 attached to the proprietor of the bonded wine cellar who will execute the certificate of deposit on Form 257 and return one copy of the forms to the storekeeper-gauger for filing. The storekeeper-gauger will forward a copy of Form 1520 to the assistant regional commissioner and furnish the remaining copy to the distiller.

(68A Stat. 667; 26 U. S. C. 5373)

§ 221.624 *Distillery and bonded wine cellar not on adjacent premises.* Where the distillery and bonded wine cellar are not located on adjacent premises the storekeeper-gauger at the distillery will, upon removal of the wine spirits execute his certificate of gauge and removal on all copies of Form 257, retain one copy with a copy of Form 1520 attached, and immediately forward the remaining copies (two or three, as the case may be), with a copy of Form 1520 attached to each, to the bonded wine cellar. When shipment is to be made by truck, all copies of the forms to be forwarded to the bonded wine cellar will be sealed in an envelope by the storekeeper-gauger, addressed to the bonded wine cellar and handed to the person in charge of the truck for delivery. The storekeeper-gauger will forward one copy of Form 1520 to the assistant regional commissioner and will deliver one copy of the form to the distiller.

(68A Stat. 634, 637; 26 U. S. C. 5194, 5373)

§ 221.625 *Certificate of monthly deposits in adjacent bonded wine cellar.* If the distillery and bonded wine cellar are located on adjacent premises and wine spirits are to be transferred to the bonded wine cellar from time to time during the month, the application on Form 257 may cover all wine spirits to be transferred to the bonded wine cellar during the month. On receipt of Form 257 from the distiller the storekeeper-gauger will, at the time of the initial withdrawal, attach a copy of Form 1520 to each copy of Form 257, retain one copy and deliver two copies to the proprietor of the bonded wine cellar. A copy of Form 1520 will be forwarded to the assistant regional commissioner and the remaining copy will be furnished to the distiller. On succeeding withdrawals the storekeeper-gauger will furnish two copies of Form 1520 to the proprietor of the bonded wine cellar, one to the distiller, forward a copy to the assistant regional commissioner and retain the remaining copy to be attached to Form 257. At the close of the month the storekeeper-gauger will execute part 5 and the proprietor of the bonded wine cellar will execute part 6 on all three copies of Form 257. The storekeeper-gauger will file one copy of Form

257 with Forms 1520 attached at the distillery as a permanent record.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

REMOVAL OF WINE SPIRITS BY PIPELINE FOR USE IN WINE PRODUCTION

§ 221.626 *Application, Form 257.* Where it is desired to transfer wine spirits from the receiving tanks or from storage tanks in the brandy deposit room by pipeline to bonded wine cellars on adjacent premises, the procedure prescribed in §§ 221.621 to 221.625 for transfer of packages will be followed. Notation of transfer by pipeline will be made by the storekeeper-gauger on each copy of Form 1520.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 221.627 *Gauge of wine spirits.* The wine spirits may be gauged by weight in weighing tanks in the distillery and run directly from such tanks to wine spirits addition tanks or wine spirits storage tanks in the bonded wine cellar; or the wine spirits may be gauged in a weighing tank in the bonded wine cellar in which case the wine spirits will be run directly from the receiving tanks in the distillery to the weighing tank in the bonded wine cellar; or the wine spirits may be gauged by volume in receiving tanks in the fruit distillery and conveyed directly by unbroken pipe lines from receiving tanks to wine spirits addition tanks or wine spirits storage tanks in the bonded wine cellar.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 221.628 *Supervision.* The wine spirits will be withdrawn under the supervision of the storekeeper-gauger. The officer supervising the removal of the wine spirits will see that control valves in the pipeline are properly set to direct the flow of wine spirits to the desired tank before the valve permitting the flow of wine spirits from the receiving tank is opened. The storekeeper-gauger will also see that the valves controlling the flow of wine spirits into or out of tanks are locked with Government locks at all times, except when necessary to be open for the transfer of wine spirits. The keys will remain in the custody of the storekeeper-gauger or, if no storekeeper-gauger is assigned to the distillery, in the custody of the assistant regional commissioner or other officer designated by him.

(68A Stat. 667; 26 U. S. C. 5373)

REMOVAL OF WINE SPIRITS IN TANK CARS OR TANK TRUCKS FOR USE IN WINE PRODUCTION

§ 221.629 *Application, Form 257.* Where it is desired to remove brandy in tank cars or tank trucks to a bonded wine cellar the procedure prescribed in §§ 221.621 to 221.625 for transfer in packages will be followed. The proprietor of the bonded wine cellar will state on his application that the wine spirits are to be transported by tank car or tank truck.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 221.630 *Tank car and tank truck requirements.* Tank cars and tank trucks used to transport wine spirits for use in wine production must be constructed, marked, inspected, filled, and

sealed in accordance with the provisions of §§ 221.600-221.608 covering transfers to internal revenue bonded warehouses, except that notation required by § 221.607 will be made on Form 257 in lieu of Form 236.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 221.631 *Label to be attached.* When wine spirits are shipped in bond in a tank car or tank truck to a bonded wine cellar for use in wine production, a label, dated and signed by the storekeeper-gauger, showing that the wine spirits are shipped in bond for use in wine production and giving the name, registered number, and location (city or town and State) of the distillery from which shipped, and the bonded wine cellar to which shipped, shall be securely attached to the route board of the car or truck where it may be readily examined by internal revenue officers. The label, which will be furnished by the distiller, will be in substantially the following form:

Shipped in bond by

CALIFORNIA GRAPE COMPANY

F. D. No. 80, St. Helena, Calif.,

to

WESTERN WINE COMPANY

B. W. No. 50, Santa Rosa, Calif.,

For use in wine production

(Date) (Storekeeper-gauger)

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

REMOVAL OF BRANDY, FREE OF TAX, FOR EXPORTATION

§ 221.632 *Procedure.* Where the distiller desires to remove brandy, free of tax, from the distillery receiving tanks for exportation in tank cars, he will file application on Form 206, in quintuplicate, and bond on Form 547, 548, 657, or 658, as the case may be, in triplicate, with the assistant regional commissioner and otherwise comply with all applicable requirements of Part 225 of this title, governing the withdrawal of distilled spirits from internal revenue bonded warehouses, free of tax, for exportation which are hereby extended to cover the exportation, free of tax, of brandy from the distillery. The tank cars must be so constructed that all openings may be securely closed and sealed.

(68A Stat. 647; 26 U. S. C. 5247)

SUBPART W—LOSSES OF BRANDY ON PREMISES OF A FRUIT DISTILLERY OR IN TRANSIT THERETO

§ 221.645 *Loss by theft.* The tax shall be collected on brandy stolen while on the premises of a fruit distillery or in transit thereto for redistillation, unless the distiller submits proof as to the cause of the loss and establishes to the satisfaction of the assistant regional commissioner that it did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, consignor, consignee, bailee, or carrier or the employees of any of them. Claim for remission of tax on brandy lost by theft shall be filed as provided in this subpart. The tax on brandy lost by theft may be remitted or refunded

only to the extent that the claimant is not indemnified or recompensed for such tax.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.646 *Unauthorized voluntary destruction.* The tax shall be collected on brandy voluntarily destroyed while on the premises of a fruit distillery or in transit thereto for redistillation, unless the distiller or other person responsible for the tax obtained authorization for such destruction in each case, as required by this part.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.647 *Losses except by theft.* The tax on brandy lost otherwise than by theft while on the premises of a fruit distillery or in transit thereto, may be remitted. In the case of any such loss of brandy prior to payment of the tax thereon, the assistant regional commissioner may require the distiller, owner, or other person responsible for the tax to submit proof as to the cause of such loss and, where deemed necessary, to file a claim for remission of the tax as provided by this subpart.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.648 *Report of losses.* Losses of brandy on the premises of a fruit distillery or in transit thereto must be reported to the assistant regional commissioner by the distiller immediately after the losses are discovered. Where losses of brandy in the fruit distillery occur or are discovered while an internal revenue officer is on duty, the officer will immediately make a full report of the loss to the assistant regional commissioner. The report should set out the nature, cause, and extent of the loss in sufficient detail to bring out all the known material facts and circumstances surrounding the loss. The condition of each receiving tank or other container from which loss has been sustained, and the quantity loss therefrom, should be reported by the officer.

(68A Stat. 604; 26 U. S. C. 5011)

§ 221.649 *Investigation by assistant regional commissioner.* The assistant regional commissioner will consider the nature and extent of any loss reported by the distiller or internal revenue officer and will immediately make such investigation and require such evidence to be submitted as he may deem necessary.

(68A Stat. 604; 26 U. S. C. 5011)

§ 221.650 *Filing of claims.* Claims for remission of tax on brandy lost on the premises of a fruit distillery or in transit thereto, when required, will be filed promptly with the assistant regional commissioner of the region in which the distillery is located. Where a required claim for remission of tax on such brandy is not filed as provided in §§ 221.645 and 221.647, an assessment will be made in accordance with prescribed procedure.

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.651 *Form of claims.* Claims for remission of tax for losses occurring on fruit distillery premises, or in transit thereto, shall be made on letter size paper (original only), and shall set forth the following information:

(a) The name of the distiller and the registry number and location of the distillery;

(b) The serial numbers of the receiving tanks or other containers from which the brandy was lost;

(c) The quantity of brandy lost from each receiving tank or other container, and the total quantity of brandy covered by the claim;

(d) The total amount of tax for which the claim is filed;

(e) The date of the loss, or, if such date is not known, the date on which the loss was discovered, and the cause and nature thereof, together with all the facts surrounding the loss;

(f) The name of the carrier, if any;

(g) If lost by theft, whether the loss occurred as the result of connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee or carrier, or the employees of any of them;

(h) Whether the claimant is indemnified or recompensed for the tax, and, if so, the amount and nature of such indemnity or recompense. The actual value of the brandy, less the tax, must be stated explicitly, and where required, certified copies of all policies of insurance or other documents of indemnity covering the brandy must be furnished. Such claim shall be signed by the proprietor or his authorized agent and immediately above the signature will appear the following statement: "I declare under the penalties of perjury that this claim has been examined by me and to the best of my knowledge and belief is a true and correct claim."

(68A Stat. 604, 634; 26 U. S. C. 5011, 5194)

§ 221.652 *Supporting statements.* Claims for remission of tax on brandy lost while on the premises of a fruit distillery or in transit thereto, must be supported by affidavits of persons having personal knowledge of the loss.

(68A Stat. 604; 26 U. S. C. 5011)

§ 221.653 *Action on claim by assistant regional commissioner.* When a claim for remission of tax is received by the assistant regional commissioner he will carefully examine the same to see that all the required information has been furnished, and will cause such investigation to be made or require such additional evidence to be submitted as he may deem necessary. Upon completion of his investigation, if any, the assistant regional commissioner will allow or disallow the claim in accordance with existing law and regulations.

§ 221.654 *Records.* Where brandy is lost or destroyed after it has been gauged for removal, or for deposit in the brandy deposit room, appropriate entry will be made by the distiller in the summary, on Form 15, of brandy produced, disposed of, and on hand. In case of loss or destruction of brandy before it is gauged, the distiller will make a notation thereof on Form 15, and attach to each copy of such form an explanatory statement of the loss.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.655 *Assistant regional commissioner's account.* An account of losses of brandy on the distillery premises shall

be kept on Form 1691. The account shall show all the information as indicated in the heading and by the various columns and as required by instructions issued in respect thereto and by this part.

§ 221.656 *Prior losses.* Any claims for the remission or refund of the tax on any loss of brandy established prior to January 1, 1955, shall be subject to the provisions of the law and regulations as they existed at the time such loss was established.

§ 221.657 *Losses after taxpayment.* Nothing in section 5011, I. R. C., or in this part, shall be construed to authorize refund of the tax where the loss occurred after the tax was paid.

SUBPART X—BRANDY PRODUCED AND NOT ACCOUNTED FOR

§ 221.665 *Determination of tax liability.* It is the duty of the assistant regional commissioner to inquire and determine whether the distiller has accounted for all the brandy produced by him. If the assistant regional commissioner finds that the distiller has not accounted for all the brandy produced by him, he shall, from all the evidence he can obtain, determine what quantity of brandy was actually produced by such distiller, whereupon an assessment will be made, at the rate imposed by law, for the difference between the quantity reported and the quantity shown to have been actually produced.

(68A Stat. 600; 26 U. S. C. 5007)

§ 221.666 *Prompt filing of returns required.* In order that there may be no unnecessary delay in making assessments, assistant regional commissioners will take such steps as may be necessary to secure the filing of fruit distillers' returns on Form 15 and storekeeper-gaugers' reports on Form 1520 within the time prescribed by law.

§ 221.667 *Assistant regional commissioner's examination of returns.* Upon receipt of the distiller's return, Form 15, the assistant regional commissioner will examine it to determine whether the distiller has accounted for all the brandy produced by him during the month. If he finds that the distiller apparently has not accounted for all the brandy produced by him, he shall make such investigation as he may deem necessary and determine, from all the evidence he can obtain, the quantity of brandy actually produced by the distiller.

(68A Stat. 600; 26 U. S. C. 5007)

§ 221.668 *Use of materials not reported.* If the assistant regional commissioner should find that the distiller has received on his premises materials which have not been accounted for, or has used materials which have not been reported as used, and has produced brandy which has not been reported, the quantity of brandy produced and not reported should be determined from all the evidence that can be obtained, including evidence of the normal actual yield of brandy from such materials at the particular plant.

(68A Stat. 600; 26 U. S. C. 5007)

§ 221.669 *Determining brandy produced.* If it is found that all materials received have been accounted for and

all materials used have been reported, but that the distiller has not accounted for all the brandy produced, the quantity actually produced should be determined from all the evidence that can be obtained. The evidence that brandy has been produced from materials reported used and has not been accounted for by the distiller should be direct and positive.

(68A Stat. 600; 26 U. S. C. 5007)

§ 221.670 *Notice to distiller.* If it is determined that the distiller has not accounted for all the brandy produced by him, the assistant regional commissioner will, unless the interests of the Government require an immediate assessment, notify the distiller of the proposed assessment and afford him an opportunity to submit within 30 days, or such further time as the assistant regional commissioner may consider reasonable, evidence showing why the proposed assessment should not be made.

§ 221.671 *Nature of evidence.* The evidence submitted by the distiller should be in the form of affidavits and certified documents.

§ 221.672 *Consideration of distiller's response.* If the distiller responds to the notice and submits evidence bearing on the merits of the proposed assessment, the assistant regional commissioner will give due consideration thereto and make such further investigation as he may deem advisable. If, after consideration of all the facts, the assistant regional commissioner finds that tax is due, an assessment will be made, in accordance with prescribed procedure.

§ 221.673 *Claim for remission.* Where the distiller claims, pursuant to notice of proposed assessment, that the brandy produced and not accounted for was actually lost on the distillery premises, the procedure prescribed by Subpart W of this part shall be applicable.

(68A Stat. 600, 604; 26 U. S. C. 5007, 5011)

§ 221.674 *Distiller's failure to respond.* If the distiller fails to respond to the notice of proposed assessment within the time specified, an assessment will be made in the amount found due, in accordance with prescribed procedure.

SUBPART Y—OPERATIONS ON SUNDAY

§ 221.680 *Emergencies only.* No distilling operations may be conducted at a fruit distillery at any time between the hours of 11:00 p. m. of any Saturday and 1:00 a. m. of the next succeeding Monday, unless the assistant regional commissioner shall find that an emergency exists requiring operation of the distillery between such hours for the purpose of preventing the loss, and effecting the salvaging, of crop or other materials.

(68A Stat. 636, 640; 26 U. S. C. 5195, 5215)

§ 221.681 *Application.* Any fruit distiller desiring to operate his distillery between 11:00 p. m. Saturday and 1:00 a. m. Monday shall file application, in duplicate, with the assistant regional commissioner, setting forth specifically the date on which he desires to so operate and describing fully the necessity therefor. The application shall be filed a suf-

ficient time in advance of the earliest date named therein for such emergency operation to enable the assistant regional commissioner to determine whether such an emergency exists, and, if he approves the application, to assign an officer to supervise the operations where deemed necessary.

(68A Stat. 636, 640; 26 U. S. C. 5195, 5215)

§ 221.682 *Approval of application.* If the application is approved, the assistant regional commissioner will note his approval on both copies thereof, with the date of approval, and will return one copy to the applicant and retain the other copy on file.

(68A Stat. 636, 640; 26 U. S. C. 5195, 5215)

§ 221.683 *Penalty for unauthorized operation.* Any operation of the distillery between 11:00 p. m. Saturday and 1:00 a. m. Monday, without first receiving authorization therefor from the assistant regional commissioner, as provided in this subpart, will render the distiller liable to the penalty prescribed by law.

(68A Stat. 636, 640; 26 U. S. C. 5195, 5215)

SUBPART Z—SUSPENSION AND RESUMPTION OF OPERATIONS

SUSPENSION OF OPERATIONS

§ 221.690 *Notice, Form 124.* Any fruit distiller desiring to suspend operations at his distillery for the season or for a period of 30 days or more shall give notice on Form 124, in duplicate, stating when he will suspend operations. Where a storekeeper-gauger is assigned to the distillery the notice will be delivered to such officer. The giving of such notice will not be required where operations are temporarily suspended for less than 30 days due to accident, the necessity for making repairs, seasonal conditions, or other causes. Form 124 will not be required when operations are suspended pursuant to the filing of Form 1696.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.691 *Completion of operations required.* Before the distillery may be suspended for a period of 30 days or more, except in the case of unavoidable accident as provided in § 221.696, all distilling materials, fermented or in the process of fermentation, and all unfinished brandy, except distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil, must be distilled and all brandy produced must be run into the receiving tanks, drawn therefrom, gauged, and removed from the distillery. Distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil may, as provided in § 221.412, be stored in the brandy deposit room for a period of not more than 30 days after suspension of operations, pending removal for denaturation, or, in the case of change of type of distillery, retained in locked heads and tails tanks or in the brandy deposit room for a period of not more than 60 days, as provided in § 221.722. Such distillates not so stored in the brandy deposit room must be destroyed or removed for denaturation before suspension of the distillery, except that where the suspension is due to

change of type of distillery they may be retained in locked heads and tails tanks for not more than 60 days, as provided in this section.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.692 *Date of suspension.* The distiller will fix in the notice the time when all distilling material on the distillery premises will be distilled and all brandy in the distillery run into the receiving tanks, except unfinished brandy or distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil which are to be retained on the premises during a temporary change in the type of distillery, as provided in subpart CC of this part. Where no storekeeper-gauger is assigned to the distillery the distiller will forward the notice to the assistant regional commissioner in sufficient time to reach him at least 48 hours before the date the distiller intends to suspend operations, in order that the assistant regional commissioner may detail an officer to lock the furnace door of each still or the control valve in the pipeline conveying steam or fuel to each still, as the case may be, at the time operations are suspended.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.693 *Locking furnace doors, etc.* When notice of suspension is given by the distiller the storekeeper-gauger on duty at the distillery, or the officer detailed to visit the distillery by the assistant regional commissioner, will see that operations are completed as provided in § 221.691 and will then lock the furnace door of each still or the control valve in the pipeline conveying steam or fuel to each still and will supervise the disconnection of the distillery machinery and the removal to the bonded warehouse or the receiving room or brandy deposit room, or other secure place, of some portion of such machinery necessary for distillation. The locks used for securing furnace doors, or the control valves in steam or fuel lines, will be taken from such other places in the distillery, where locks are not necessary while the distillery is suspended, as may be designated by the assistant regional commissioner. In lieu of removing a portion of the distilling apparatus to the warehouse or other secure place, the assistant regional commissioner may require two of the ports (manheads) of column stills to be locked open by passing a chain or two iron straps through the ports and around the outside of the still, and locking the chain or straps in place.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.694 *Officer's certificate of suspension.* The officer will certify on each copy of Form 124 to the action taken by him, and will furnish one copy of the form to the distiller and forward the remaining copy to the assistant regional commissioner. The assistant regional commissioner may relieve any officer assigned to the plant from duty thereat during the period of suspension.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.695 *Distilling material at suspended distillery forbidden.* Except as provided in § 221.696, no distiller may,

after the time fixed in his notice, Form 124, for suspension of work at the distillery, carry on the business of a distiller on the said premises, or have any distilling material, fermented or in the process of fermentation, in his distillery or on any premises connected therewith, or have in his possession or under his control any such distilling material, with intent to distill the same on said premises.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.696 *Suspension caused by unavoidable accident.* In case of an accident necessitating a suspension for a period of 30 days or more, the distiller should, if possible, distill all distilling material, fermented or in the process of fermentation, and all unfinished brandy on hand. Should the accident be of such a nature as to render this impossible, the distiller will immediately give notice of suspension on Form 124, in duplicate, as provided in § 221.690. The storekeeper-gauger will then lock the furnace doors of the stills, or the control valves in the steam or fuel lines leading to the stills, and supervise the disconnection and removal of distillery machinery, as provided in § 221.693. The officer will then certify on Form 124, in duplicate, to the action taken by him and state the kind and quantity, if any, of distilling material or unfinished brandy on hand at the time of such suspension, and will furnish one copy of the form to the distiller and forward the remaining copy to the assistant regional commissioner. The assistant regional commissioner may relieve any officer assigned to the plant from duty thereat during the period of suspension.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

RESUMPTION OF OPERATIONS

§ 221.697 *Notice, Form 125.* No distiller may carry on the business of a distiller after the time stated in his notice of suspension, Form 124, until he shall have given another notice to the assistant regional commissioner on Form 125, in duplicate, stating the time when he will resume operations. This notice should be forwarded to the assistant regional commissioner a sufficient time in advance of the date it is desired to resume operations to enable the assistant regional commissioner to assign a storekeeper-gauger to remove the locks. The notice should ordinarily reach the assistant regional commissioner at least 48 hours in advance of the date the distiller desires to resume operations. The assistant regional commissioner will designate an officer to remove the locks and other fastenings placed on the equipment at the time of suspension and to supervise the connection of the machinery on the date specified in the Form 125. Where the suspension was caused by accident, and distilling material or unfinished brandy remained on hand, the designated officer will determine whether the same kind and quantity of distilling material or unfinished brandy reported on Form 124 as on hand at the time of suspension are on hand at the time of resumption, less natural evaporation.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.698 *Officer's certificate of removal of locks and fastenings.* The officer will certify on Form 125, in duplicate, to the action taken by him and to the kind and quantity, if any, of distilling material or unfinished brandy on hand at the time of such resumption, and will furnish one copy of Form 125 to the distiller and forward the remaining copy to the assistant regional commissioner.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.699 *Unauthorized removal of locks and fastenings.* No revenue officer or other person may remove Government locks and fastenings and permit connection of the machinery where a distillery has been suspended, except by direction of the assistant regional commissioner pursuant to notice of resumption.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

SUBPART AA—REGISTRY OF STILL

§ 221.705 *Registry on Form 26.* Stills must be registered in accordance with the provisions of § 221.178 and Part 196 of this title, and the instructions on Form 26. Stills to be used for the production of various types of distilled spirits may be registered for "distilled spirits" and the specific type need not be shown. Thereafter, when the plant is changed from the production of one type of spirits to another, reregistration by the same distiller will not be required. The temporary suspension of a distillery does not necessitate reregistration of the stills. The operation of a distillery by alternating proprietors, where no permanent change in ownership occurs, does not require reregistration of the stills by the proprietors. When there is a change in location or use or a bona fide change in ownership of a still, the still must be registered to reflect the change. The assistant regional commissioner will, upon approving the registration of a still on Form 26, retain one copy, forward one copy to the Director, Alcohol and Tobacco Tax Division, and return the remaining copy to the distiller. The distiller will retain his copy at the distillery available for inspection by internal revenue officers.

(68A Stat. 628; 26 U. S. C. 5174)

SUBPART BB—OPERATIONS BY DISTILLER UNDER DIFFERENT TRADE NAMES OR STYLES

§ 221.710 *Commencement of operations.* Whenever a fruit distiller desires to operate his distillery under a trade name or style which has not been previously approved, he must comply with §§ 221.242–221.247 and secure approval thereof in the manner prescribed by Subpart N of this part prior to commencement of operations thereunder. Thereafter, whenever he desires again to operate under such trade name or style, he must comply with § 221.293 and secure approval as prescribed by Subpart N of this part, prior to commencement of operations thereunder.

§ 221.711 *Disposition of materials in process.* Whenever the distiller desires to operate his distillery under a trade name or style other than the trade name or style under which he is then operating, and has complied with the provisions of § 221.710, he will not be required to

complete the distillation of materials and unfinished brandy in the process of manufacture before commencing business under such other trade name or style.

§ 221.712 *Finished brandy.* All finished brandy remaining in the receiving tanks or in storage tanks in the brandy deposit room, if any, at the time the change in trade name or style becomes effective must be marked and removed in the trade name or style under which they were finished. All finished brandy produced from the materials in process and unfinished brandy remaining on hand at the time the change in trade name or style becomes effective must be marked and removed in the trade name or style under which they are finished. Brandy in properly marked and branded packages may, if desired, be retained in the brandy deposit room, notwithstanding a change in the trade name of the distiller.

§ 221.713 *Records.* Separate records on Form 15 will not be required for operations under each trade name, but the distiller must note on such record the trade names or styles under which he operated during the month and the dates of operation under each. Where brandy is produced under a trade name, the storekeeper-gauger's report of gauge, Form 1520, must show both the real name of the actual distiller and the trade name under which the brandy was produced.

SUBPART CC—ALTERNATE OPERATION AS INDUSTRIAL ALCOHOL PLANT OR REGISTERED DISTILLERY

§ 221.720 *Qualifying for alternate operation.* Whenever a distillery established or operated under this part is to be operated alternately as such and as an industrial alcohol plant or registered distillery, the procedure prescribed in Subpart M of this part for effecting such change in the type of the distillery must be complied with.

§ 221.721 *Completion of operations required.* When a fruit distillery is to be operated as an industrial alcohol plant or as a registered distillery, the business of producing brandy, except as provided in this subpart, must be completely finished by the person or persons first carrying on the business, and the distillery duly suspended before it can be operated as an industrial alcohol plant or a registered distillery. Except as provided in §§ 221.722 and 221.723 all unfinished brandy, including singlings and low wines, and distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil collected in accordance with the provisions of Subpart Q of this part, must be redistilled and run into receiving tanks, drawn off, gauged, and removed by the outgoing distiller before the distillery can be operated as an industrial alcohol plant or registered distillery.

(68A Stat. 632, 640; 26 U. S. C. 5191, 5215)

§ 221.722 *Retention of distillates.* Where the change in the type of plant is to be temporary only, and the quantity of distillates on hand containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil is

insufficient for a carload shipment (but not over 10,000 gallons) and is to be shipped for denaturation, the outgoing distiller may retain such distillates under Government lock in heads and tails tanks or in the brandy deposit room in the distillery until the plant is again operated by him as a fruit distillery under the provisions of this part (but for not more than 60 days), if such distiller furnishes a duly executed consent of surety, Form 1533, in triplicate, continuing liability on the fruit distiller's bond, Form 30½, for the tax on such distillates retained on the premises, notwithstanding the change in the type of plant. When such distillates are so retained on the distillery premises, the assistant regional commissioner will cause a sample of the contents of each container not previously tested to be taken and analyzed to determine whether the distillate contains the required percentage of aldehydes or fusel oil.

(68A Stat. 634; 26 U. S. C. 5194)

§ 221.723 *Retention of unfinished brandy.* Where the change in type of plant is to be temporary only, the outgoing distiller may retain unfinished brandy under Government lock in unfinished brandy tanks, provided in accordance with § 221.122 in the fruit distillery, until the plant is again operated by him as a fruit distillery under the provisions of this part: *Provided*, That such distiller furnishes a duly executed consent of surety, Form 1533, in triplicate, continuing liability on the fruit distiller's bond, Form 30½, for the tax on such unfinished brandy retained on the premises, notwithstanding the change in the type of plant.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.724 *Transfer of materials, etc.* The outgoing distiller may transfer to his successor materials on hand, including those in process, at the time the change in type of plant takes place, but no brandy may be so transferred, except the residue of brandy in the stills which it is not practicable to completely boil out: *Provided*, That materials not usable and residue of brandy in stills not producible under the law at the succeeding type of plant may not be transferred to the successor. Where such materials and residue of brandy are not transferable, all materials in process must be distilled, all basic materials must be removed from the premises, and the stills and other vessels must be completely cleared of brandy, and such brandy, if other than unfinished brandy or distillates intended for retention in accordance with the provisions of §§ 221.722 and 221.723, removed from the distillery in accordance with law before the change in type of plant becomes effective. When it is again desired to resume operations as a distiller under the provisions of this part, the business of producing alcohol or whiskey, rum, et cetera, as the case may be, must be similarly finished and the industrial alcohol plant or registered distillery suspended in accordance with governing regulations.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.725 *Transfer agreement, Form 1614.* Where the outgoing distiller and his successor so arrange for the transfer of distilling materials, the outgoing distiller will file with the assistant regional commissioner four copies of Form 1614, duly executed by himself and the prospective successor: *Provided*, That in the case of alternate operations by two or more qualified distillers, to be authorized pursuant to notice on Form 1696, the outgoing distiller will file the four copies of Form 1614, duly executed with the storekeeper-gauger in charge. Brandy which has been withdrawn for redistillation from other premises may not be transferred on Form 1614 by the distiller to a successor. The form will be filed in sufficient time to permit consideration thereof in connection with the transferor's notice of suspension of operations and the transferee's qualifying documents, or in the case of alternate operations by two or more qualified distillers, with the notice of alternate operations, Form 1696. Upon receipt of Form 1614, the assistant regional commissioner or the storekeeper-gauger in charge, as the case may be, will, if he finds that the request may be properly approved, execute the certificate of approval on all copies in accordance with the instructions printed on the form, or issued in respect thereto. The provisions of § 221.150 concerning the verification of Form 27½ are hereby made applicable to Form 1614.

(68A Stat. 749; 26 U. S. C. 6065)

§ 221.726 *Locking of furnace doors not required.* In cases of alternate operation of the fruit distillery as such and as an industrial alcohol plant or registered distillery without lapse of time, it will not be necessary for the storekeeper-gauger to lock the furnace doors of the stills or the control valves in pipelines which convey steam or fuel to the stills, or to require disconnection of the distillery machinery.

§ 221.727 *Completion of records.* The outgoing distiller will complete his record, Form 15 as to the removal of basic materials from the premises, or the transfer of basic materials and materials in process to the successor, as the case may be, and as to production and removal from the distillery of all brandy produced by him. If distillates collected in accordance with Subpart Q of this part are retained on the premises under lock in tanks or in the brandy deposit room, as provided in § 221.722, or unfinished brandy is retained on the premises in locked tanks, as provided in § 221.723, a notation will be made on Form 15 showing that such unfinished brandy or distillates are temporarily retained on the premises pending resumption of operations as a fruit distillery. The distiller will continue to file monthly reports on Form 15 during the period such unfinished brandy or distillates are retained on the distillery premises. Where the plant is operated as a fruit distillery in two or more periods during the same month by the same proprietor, the operations of such proprietor will be recorded on the same Form 15, but appropriate notations will be made

on the separating lines to show the dates the distillery was operated as a registered distillery or an industrial alcohol plant and the names under which it was so operated.

(68A Stat. 637, 640; 26 U. S. C. 5197, 5215)

§ 221.728 *Records of successor.* The succeeding proprietor will enter all materials, including those in process, received from his predecessor on Form 1442 if the distillery is to be operated as an industrial alcohol plant, or on Form 1598 if the distillery is to be operated as a registered distillery. The materials received will also be entered on Form 1686 by the storekeeper-gauger if the fruit distillery is to be operated as an industrial alcohol plant or as a registered distillery. If materials are transferred when the plant is again operated as a fruit distillery, appropriate entry thereof will be made on the records of the transferor and of the transferee.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.729 *Disposition of brandy.* Where a change in the type of plant takes place, the storekeeper-gauger assigned or detailed to the distillery will see that all distillates collected in accordance with Subpart Q of this part are disposed of, and that all other unfinished brandy, except the residue of brandy in stills where the same is to be transferred to the successor as provided in § 221.724, are distilled and run into receiving tanks, drawn off, gauged, and removed by the outgoing distiller in the name under which they were produced, unless retained in the distillery in accordance with §§ 221.722 and 221.723, respectively, before the plant is operated as another type of distillery. Upon disposition or retention in the distillery of such unfinished brandy or distillates, and transfer of all other brandy to the receiving tanks, the distillery may be operated as another type of plant, but all brandy transferred to the receiving tanks must be marked and removed in accordance with law by the outgoing distiller in the name under which they were produced, before any spirits are deposited in the receiving tanks or withdrawn from the distillery by the successor.

(68A Stat. 640; 26 U. S. C. 5215)

§ 221.730 *Alternate operation by same proprietor.* Where the plant is to be operated alternately as a fruit distillery and as an industrial alcohol plant or registered distillery by the same proprietor, the procedure will be the same as in the case where the succeeding type of plant is to be operated under different proprietorship, except that in lieu of the submission of a transfer agreement on Form 1614 the distiller will, when distilling materials or the residue of brandy in stills is to be transferred to himself at the succeeding type of plant, request authority on part 1 of the form to make such transfer.

SUBPART DD—CHANGE OF PERSONS INTERESTED IN BUSINESS

§ 221.740 *Completion of operations required.* When a succession, or actual change, in the person or persons operating the distillery shall take place, other than a change brought about by opera-

tion of law, as by the appointment of an administrator, executor, receiver, trustee, assignee or other fiduciary, the business of producing brandy must be completely finished by the person or persons who have been carrying on the business, and the operations suspended before the business shall be undertaken or begun by the succeeding distiller, unless by an agreement between the outgoing distiller and the successor it shall be arranged to transfer from the former to the latter at midnight of a certain day all materials in process, and all unfinished brandy in the distillery at that hour: *Provided*, That in either case, the notice, bond and other qualifying documents of the successor have been approved to take effect on the day next succeeding that at the close of which the transfer is made. Such documents should, therefore, be submitted to the assistant regional commissioner in sufficient time to permit such approval for the date desired. Except in the case of alternate operations by two or more previously qualified distillers, as provided by § 221.320 the successor of a distiller shall not commence operations until all documents required for his qualification as such distiller have been approved by the assistant regional commissioner. All finished brandy must be marked and removed by the outgoing distiller in the name under which it was produced before any brandy is deposited in the receiving tanks or withdrawn from the distillery by the successor.

§ 221.741 *Transfer agreement, Form 1614*. Where the outgoing distiller and the successor so arrange for the transfer of all distilling materials in process, and all unfinished brandy on hand, the outgoing distiller will file with the assistant regional commissioner four copies of Form 1614, duly executed by himself and the prospective successor. Brandy which has been withdrawn for redistillation from other premises may not be transferred on Form 1614 by the distiller to a successor. The form will be filed in sufficient time to permit consideration thereof in connection with the transferor's notice of suspension or discontinuance of operations, and the transferee's qualifying documents. The assistant regional commissioner will, upon approval, forward one copy to the transferor and one copy to the transferee. The assistant regional commissioner will retain two copies, one for the file of the transferor and one for the file of the transferee.

§ 221.742 *Locking of furnace doors not required*. In such cases of succession or change in the operations of the distillery without lapse of time, it will not be necessary for the internal revenue officer to lock the furnace doors of the stills or the control valves on pipe lines which convey steam or fuel to the stills, or to disconnect the distilling machinery.

§ 221.743 *Records*. The outgoing distiller shall enter on his Form 15 all materials and all unfinished brandy transferred to his successor, who shall in turn enter such items on his Form 15 as received from his predecessor. Where the change in proprietorship is of a per-

manent nature, the outgoing distiller shall complete Form 15 and submit a final report on such form to the assistant regional commissioner. Appropriate notations will be made on such final report showing the change in proprietorship and the date thereof. Where the distillery is operated under alternating proprietorships, each proprietor shall keep a separate Form 15. When operations are conducted by the same proprietor in two or more periods during the same month, the operations by such proprietor will be entered on the same Form 15, appropriate notations being made on the separating lines to show the names of the alternating proprietors and the dates the distillery was operated by them. At the end of the month, report will be submitted to the assistant regional commissioner on such form in accordance with Subpart HH of this part.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.744 *Succession by fiduciary*. Where a change in proprietorship is brought about by operation of law, the administrator, executor, receiver, trustee, assignee, or other fiduciary may not continue the business until the required qualifying documents have been filed and approved. In the case of such change, the fiduciary shall make appropriate notation on Form 15 of his succession, and the date thereof.

SUBPART EE—SALES OF BRANDY BY FRUIT DISTILLERS

§ 221.750 *Bulk containers*. Under the regulations issued pursuant to the Federal Alcohol Administration Act (27 CFR, Part 3), distillers may sell or dispose of brandy in bulk, that is, containers having a capacity in excess of 1 gallon, (a) to other distillers and proprietors of internal revenue bonded warehouses, industrial alcohol plants and industrial alcohol bonded warehouses (holding permits under the Federal Alcohol Administration Act), including those operating tax-paid bottling houses; (b) to proprietors of Class 8 customs bonded warehouses (imported spirits only); (c) to rectifiers; (d) to bonded wine cellars for use in wine production; (e) to any agency of the United States, or of any State or political subdivision thereof; (f) for export; (g) on warehouse receipts, conforming to the regulations issued under the Federal Alcohol Administration Act, for distilled spirits in internal revenue bonded warehouses; and (h) for industrial use, as follows: For experimental purposes, and for use in the manufacture (1) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (2) of toilet products; (3) of flavoring extracts, sirups, or food products; or (4) of scientific, chemical, mechanical, or industrial products; provided such products are unfit for beverage use. Fruit distillers may not, under the regulations issued pursuant to the Federal Alcohol Administration Act (27 CFR Part 3), sell or dispose of brandy (not including neutral spirits—fruit) in bulk for industrial use unless such brandy is shipped or delivered directly to the industrial user thereof.

(49 Stat. 985, 68A Stat. 633, 634; 26 U. S. C. 5193, 5194; 27 U. S. C. 206)

§ 221.751 *Retail containers*. Except as provided in § 221.750, fruit distillers may sell or dispose of brandy only in containers having a capacity of 1 gallon or less. All such containers having a capacity of one-half pint or more must conform to the requirements of Part 175 of this title.

(49 Stat. 985, 68A Stat. 633, 634; 26 U. S. C. 5193, 5194; 27 U. S. C. 206)

SUBPART FF—SPECIAL (OCCUPATIONAL) TAXES

§ 221.755 *Wholesale and retail liquor dealer*. Except as provided in § 221.757, distillers must, in order to sell distilled spirits, file returns on Form 11, and pay special (occupational) taxes as wholesale liquor dealers or retail liquor dealers, or both, as the case may be, in accordance with the law and regulations governing the payment of such special taxes.

(68A Stat. 618, 620, 624, 846; 26 U. S. C. 5111, 5121, 5142, 5143, 7011)

§ 221.756 *Warehouse receipts covering distilled spirits*. Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every proprietor of a fruit distillery who sells, or offers for sale, warehouse receipts for distilled spirits held in fruit distilleries or stored in internal revenue bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold or offered for sale, and must file return and pay occupational tax as provided in § 221.755.

(68A Stat. 618, 620, 624, 846; 26 U. S. C. 5111, 5121, 5142, 5143, 7011)

§ 221.757 *Exemption of distiller*. No distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the prescribed stamps are affixed, shall be required to pay the special tax of a wholesale dealer in liquors on account of such sales. This provision does not exempt distillers from the payment of special taxes for sales of distilled spirits of their own production in bond (by warehouse receipts or otherwise), or in cases or containers other than the original packages, or for exportation, use in wine production, use of the United States, etc., without attachment of prescribed stamps to the original packages, nor does it exempt them from liability for special taxes where distilled spirits produced by other distillers are sold by them.

(68A Stat. 619; 26 U. S. C. 5113)

SUBPART GG—STOREKEEPER-GAUGER'S FILES

SYSTEM OF FILING

§ 221.765 *Gauge reports and removal applications*. The storekeeper-gauger's copy of all gauge reports covering brandy removed from the fruit distillery will be filed in the Government office at the plant in separate files according to type of withdrawal, in chronological order, and where brandy is withdrawn in packages, in sequences as to the serial numbers of packages removed. The applications for removal, including those on which the storekeeper-gauger prepares his report of gauge, will be filed sepa-

ately according to form number, in chronological order. The Forms 1520 covering the entry gauge of brandy deposited in an internal revenue bonded warehouse operated by the distiller on or contiguous to the distillery premises will be filed separately as a permanent record in bound form.

§ 221.766 *Reports covering deposits in warehouse operated by distiller on or contiguous to distillery premises.* The Forms 1520 covering the entry gauge of brandy deposited in an internal revenue bonded warehouse operated by the distiller on or contiguous to the distillery premises will be filed as a permanent record, in bound form, in the storekeeper-gauger's office for the warehouse in a separate file, in chronological order and in sequence to the serial numbers of the packages deposited. Where separate Government offices are maintained for the distillery and the bonded warehouse, the extra copy of Form 1520 provided in accordance with § 221.593 will be filed in the Government office for the distillery in the manner prescribed in § 221.765 for the filing of such forms covering the removal for deposit in an internal revenue bonded warehouse not operated by the distiller on or contiguous to the distillery premises.

SUBPART HH—DISTILLER'S RECORDS AND REPORTS

§ 221.770 *Record of distillery operations, Form 15.* The distiller shall keep a record of the distillery operations on Form 15. Entries shall be made as indicated by the headings of the various columns and lines and in accordance with the instructions printed on the form, and as set forth in this part. Except as provided in § 221.771 the entries shall be made before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized in this section, appropriate memoranda shall be maintained for the purpose of making the entries correctly. Form 15 will be kept at the distillery as a permanent record, in bound form, subject to inspection by internal revenue officers at any reasonable hour.

(68A Stat. 637, 681; 26 U. S. C. 5197, 5555)

§ 221.771 *Entry of brandy produced.* The quantity of brandy reported produced in all cases will be taken from the storekeeper-gaugers' reports on Form 1520 and entered as of the date of gauge.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.772 *Monthly report.* Immediately after the close of the month, but in no case later than the 10th day of the succeeding month, the distiller shall render one copy of Form 15 to the assistant regional commissioner.

(68A Stat. 637; 26 U. S. C. 5197)

§ 221.773 *Execution of report.* The report must be signed in the same manner as the distiller's notice, Form 27½, except that in the case of a corporation the affixing of the corporate seal will not be required. Each report must be verified under oath (or affirmation) by the distiller or his authorized agent at the

distillery; *Provided*, That if the form officially prescribed for such report contains therein a provision for verification by a written declaration that such report is made under penalties of perjury such report shall be verified by the execution of such declaration, and such declaration shall be in lieu of the oath required herein for verification. Where the reports are signed by an agent, proper power of attorney, authorizing the agent to execute the reports for the distiller, must be filed with the assistant regional commissioner.

(68A Stat. 749; 26 U. S. C. 6065)

§ 221.774 *Record of sales at tax-paid premises, Form 52-E.* Every proprietor of a fruit distillery who maintains tax-paid premises at which tax-paid distilled spirits are received, stored, and sold in bulk, shall keep Form 52-E, of all spirits, both bulk and bottled, received and disposed of at his tax-paid premises: *Provided*, That if such proprietor so desires he may keep Form 52-E for bulk spirits only and Record 52, for bottled spirits only. Where only bottled spirits are received, stored, and sold at such tax-paid premises, the proprietor shall keep Record 52 of all such spirits received and disposed of at his tax-paid premises. By tax-paid premises is meant the "tax-paid" or "free" warehouse or room maintained in conjunction with the distillery, or premises maintained at other locations for the receipt, storage, and disposition of tax-paid spirits. Separate records must be kept at each of such premises.

(68A Stat. 619; 26 U. S. C. 5114)

§ 221.775 *Record of warehouse receipts to be kept by distiller.* Every proprietor of a fruit distillery who sells, or offers for sale, distilled spirits by warehouse receipts shall keep a separate record, and render a monthly transcript, of all purchases and sales of warehouse receipts on Form 52-F. There need not be entered on Form 52-F transactions in warehouse receipts not involving the purchase or sale of distilled spirits, such as the receipt from a warehouseman of warehouse receipts covering the deposit or bottling of spirits in his warehouse or the surrender of warehouse receipts for the bottling of the spirits in bond or their transfer in bond to another warehouse. Entries on Form 52-F shall be made as indicated by the headings of the columns and lines of the form and in accordance with the instructions printed thereon or issued in respect thereto, and as required by this part. The provisions of § 221.777 with respect to the time of making entries and of § 221.782 with respect to forms to be provided by users, are hereby made applicable to Form 52-F. The provisions of § 221.778 with respect to a separate record of serial numbers of cases are hereby made applicable to Form 52-F with respect to serial numbers of packages and cases purchased or sold by warehouse receipts. The monthly transcript on Form 52-F shall be forwarded to the assistant regional commissioner on or before the tenth day of the succeeding month. The physical removal of brandy from the fruit distillery shall

continue to be reported on Form 15 in accordance with the provisions of § 221.770. The physical receipt and disposition of distilled spirits at tax-paid premises shall continue to be reported on Form 52-E or Record 52, as the case may be, in accordance with the provisions of § 221.774.

(68A Stat. 618, 619, 637; 26 U. S. C. 5112, 5114, 5197)

§ 221.776 *Place where Form 52-F shall be kept.* Every distiller shall keep Form 52-F at the place of business where warehouse receipts are sold or offered for sale.

(68A Stat. 618, 619, 637; 26 U. S. C. 5112, 5114, 5197)

§ 221.777 *Time of making entries.* Daily entries shall be made on Record 52 and Form 52-E, as indicated by the headings of the various columns and in accordance with instructions printed thereon before the close of business of the day next succeeding the day on which the transactions occur. Where the proprietor of a tax-paid premises defers the making of entries to the next business day, as authorized in this section, he shall maintain a separate record, such as invoices, of the removals of brandy showing the removal data required to be entered on Record 52 or Form 52-E and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly.

(68A Stat. 619; 26 U. S. C. 5114)

§ 221.778 *Separate record of serial numbers of cases.* Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52 or Form 52-E, provided the proprietor keeps in his place of business a separate record, approved by the assistant regional commissioner, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of two years and in such a manner that the required information may be ascertained readily therefrom, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized in this section, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the assistant regional commissioner shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority dated _____"

(68A Stat. 619; 26 U. S. C. 5114)

§ 221.779 *Reports.* Except as otherwise provided in this section the pro-

prietor shall file, daily, full and complete transcripts of Record 52 and Form 52-E (Parts 1 and 2) on Forms 52-A, 52-B, and 52-E (Parts 1 and 2) with the assistant regional commissioner, by delivering or mailing them to such officer on the date the transactions entered therein occurred: *Provided*, That in any case in which the assistant regional commissioner shall direct, the transcripts shall be so filed with the supervisor in charge instead of with the assistant regional commissioner. The transcripts shall bear the following certification signed by the person or officer authorized to execute Form 338 or 52-E.

I hereby certify that these transcripts, consisting of _____ pages, disclose all the transactions which occurred during the period covered thereby, and that each entry is correct.

If in any case the assistant regional commissioner shall so authorize, the transcripts, in lieu of being filed daily, may be filed with him on or before the 10th day of the month succeeding the month in which the transactions in distilled spirits occurred. In such event, transactions will be entered on Record 52 and Form 52-E in accordance with the provisions of § 221.777. Monthly summary reports on Form 338 (where Record 52 is kept) and Form 52-E (Part 3) shall be prepared in duplicate, one copy of which will be retained on file and the original forwarded to the assistant regional commissioner on or before the 10th day of the month succeeding the month in which the transactions in distilled spirits occurred. Records kept on Record 52 and Form 52-E shall be preserved for a period of 2 years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by any internal revenue officer.

(68A Stat. 619; 26 U. S. C. 5114)

§ 221.780 *Payment of tax, bottling charge, etc., by third party.* The proprietor of a fruit distillery shall report, on Form 15, part 2, when Record 52 is kept, on part 2 and on transcript, Form 52-B, and when Form 52-E is kept, on part 2, the name and address of each consignee, in the column now designated "Name". In the column now designated "Address," there will be reported the name and address of the person, firm or corporation paying (by advancement or reimbursement) either tax, bottling charge, brokerage fee, handling charge, or clearance fee, indicating which are included. The heading of both columns will be amended accordingly.

(68A Stat. 619; 26 U. S. C. 5114)

§ 221.781 *Order by third party to ship or deliver brandy.* (a) Where the proprietor of a fruit distillery ships or delivers brandy to a consignee on the order of another wholesale liquor dealer, detailed records of the transactions shall be kept on Form 15, part 2 by the proprietor of the fruit distillery making the shipment or delivery, on Record 52 by the wholesale liquor dealer giving the order, and on Record 52 by the consignee if he is a wholesale liquor dealer. For example, assuming that the proprietor of

fruit distillery (A) ships or delivers the brandy to consignee (C) on the order of wholesale dealer (B), entries will be made on the prescribed forms as follows:

(1) The proprietor of the fruit distillery (A) will show on his Form 15, part 2, the name and address of wholesale dealer (B) who ordered the brandy, as well as the name and address of consignee (C), the person to whom the brandy is actually shipped or delivered;

(2) Wholesale dealer (B) will show in his Record 52 that the brandy was purchased from distiller (A), giving both the name and address of (A), and will at the same time make an entry showing that the brandy was shipped or delivered by (A) to consignee (C) giving the name and address of (C); and

(3) Consignee (C), if a wholesale liquor dealer, will show in his Record 52 that the brandy was purchased from wholesale dealer (B) and received by him from the proprietor of fruit distillery (A), giving name and address of both. A copy of Form 15 and transcripts of Record 52 on Forms 52-A and 52-B, required to be filed with the assistant regional commissioner, will similarly show the details of such transactions.

(b) Where the proprietor of a fruit distillery keeps Record 52, or Form 52-E, and is a party to transactions similar to those described in this section, he shall make similar entries of such transactions in Record 52, or Form 52-E, as the case may be; and the transcripts on Forms 52-A and 52-B, or 52-E, respectively, required to be filed with the assistant regional commissioner, will likewise show the details of the transactions.

(68A Stat. 619; 26 U. S. C. 5114)

§ 221.782 *Forms to be provided by users.* Record 52 and Forms 52-A, 52-B, 52-E, 52-F, and 338 will be provided by users at their own expense but must be in the form prescribed by the Director, Alcohol and Tobacco Tax Division: *Provided*, That with the approval of the Director, Alcohol and Tobacco Tax Division, they may be modified to adapt their use to tabulating or other mechanical equipment: *Provided further*, That where the form is printed in book form, including loose-leaf books, the instructions may be printed on the cover or the fly-leaf of the book, instead of on the individual form.

§ 221.783 *Verification of reports.* Reports on Forms 52-E, 52-F and 338 must be filed in accordance with the instructions printed on the forms and be sworn to before an officer authorized to administer oaths: *Provided*, That if the form officially prescribed for any such report contains therein a provision for verification by a written declaration that the report is made under penalties of perjury, such report shall be verified by the execution of such declaration and such declaration so executed shall be in lieu of the oath required in this section for verification.

(68A Stat. 749; 26 U. S. C. 6065)

SUBPART II—GENERAL PROVISIONS RELATING TO DISTILLERIES

§ 221.790 *Production of mash, wort, or wash.* No mash, wort, or wash fit for

distillation or for the production of spirits or alcohol shall be made or fermented in any building or on any premises other than a distillery or industrial alcohol plant duly authorized according to law, except for the manufacture of fermented liquors or for the manufacture of vinegar.

(68A Stat. 640; 26 U. S. C. 5216)

§ 221.791 *Sale or removal of mash, wort, or wash; distillation.* No mash, wort, or wash made and fermented in any distillery or industrial alcohol plant shall be sold or removed therefrom before being distilled; and no person other than an authorized distiller or proprietor of an industrial alcohol plant shall by distillation or by any other process separate the alcoholic spirits from any fermented mash, wort, or wash, except for the manufacture of vinegar.

(68A Stat. 640; 26 U. S. C. 5216)

§ 221.792 *Removal of spirits at night.* Under the law, no person may remove any distilled spirits at any other time than after sunrise and before sunset in any cask or package containing more than 10 gallons from any premises or building in which the same may have been distilled, redistilled, rectified, compounded, manufactured, or stored. This provision does not forbid the removal from the distillery, under the supervision of the storekeeper-gauger, of brandy by pipeline after sunset to a contiguous bonded wine cellar for use in wine production or to an internal revenue bonded warehouse located on the distillery premises.

(68A Stat. 636, 640; 26 U. S. C. 5195, 5215)

§ 221.793 *Use of distillery premises.* The distillery premises must be used exclusively for the purpose of distilling, except that the assistant regional commissioner may authorize the use of the distillery buildings or premises for miscellaneous storage of unfermentable materials during periods the distillery is under suspension.

(68A Stat. 627; 26 U. S. C. 5171)

§ 221.794 *Exceptions to construction and equipment requirements.* The Director, Alcohol and Tobacco Tax Division, may approve details of construction and equipment in lieu of those specified in this part where it is shown that it is impracticable to conform to the prescribed specifications, and the proposed construction and equipment will afford as much or more security and protection to the revenue as is intended by the specifications prescribed in this part, and where such variations will not be contrary to any provision of law. Where it is proposed to substitute in construction and equipment for that for which specifications are prescribed, prior approval must be obtained in accordance with the provisions of § 221.796.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.795 *Exceptions to methods of operation.* The Director, Alcohol and Tobacco Tax Division, may in case of emergency, approve methods of operation other than those provided for by this part, where it is shown that variations from the requirements are neces-

sary, will not hinder the effective administration of this part, will not jeopardize the revenue, and where such variations are not contrary to any provision of law. Where it is proposed to employ methods of operations other than those provided for by this part, prior approval must be obtained in accordance with the provisions of § 221.796.

(68A Stat. 680; 26 U. S. C. 5552)

§ 221.796 *Application.* A proprietor who proposes to employ methods of operations or construction or to install equipment, other than as provided in this part, shall submit a letterhead application so to do, in triplicate, to the assistant regional commissioner. Such application shall describe the proposed variations and state the need therefor. Where variations in construction and equipment cannot be adequately described in the application, drawings or photographs shall also be submitted. The assistant regional commissioner will make such inquiries as are necessary to determine the necessity for the variations and whether approval thereof will hinder the effective administration of this part or result in jeopardy to the revenue. On completion of the inquiry, the assistant regional commissioner will forward two copies of the application to the Director, Alcohol and Tobacco Tax Division, together with a report of his findings and his recommendation.

(68A Stat. 680; 26 U. S. C. 5552)

SUBPART JJ—MANUFACTURE, TAXPAYMENT, REMOVAL, AND REGISTRATION OF STILLS AND WORMS

§ 221.805 *General.* Whenever fruit distillers manufacture or reconstruct stills or worms, or set up, sell, or remove stills or distilling apparatus, they must comply with Part 196 of this title, governing the payment of special and commodity taxes, the securing of permits before setting up or removing stills and distilling apparatus, and the registration of stills and distilling apparatus set up.

SUBPART KK—LOCKS AND SEALS

§ 221.810 *General.* Except as otherwise provided in this part the Director, Alcohol and Tobacco Tax Division, will furnish, at the expense of the United States, all Government locks and seals required to be used at fruit distilleries. Assistant regional commissioners will see that distilleries in their respective regions are fully equipped with locks in good condition, and that the necessary seals are provided for seal locks. Government locks are required upon all necessary openings in the distillery apparatus by which access may be had to brandy in the process of manufacture from the first still in which the vapors rise until the finished brandy is deposited in the receiving tanks; upon all doors in the receiving and brandy deposit rooms, if any; and upon the control valves in pipelines which convey steam or fuel to the stills or which convey brandy to warehouse storage tanks or to tanks in contiguous bonded wine cellars or to tank cars or tank trucks; and otherwise as specifically provided by this part or

where deemed necessary by the assistant regional commissioner.

(68A Stat. 628, 640; 26 U. S. C. 5173, 5215)

§ 221.811 *Seal locks.* Seal locks will be used on the entrance doors of the receiving and brandy deposit rooms; on the door of the Government cabinet; on the manheads, inlets, outlets, and other openings of receiving tanks, except that plain locks will be used on receiving tanks located in a securely constructed receiving or brandy deposit room; and on the manheads, inlets, outlets and other openings of singlings tanks, except that where the singlings tanks are connected with a closed locked still in which the singlings are redistilled, seal locks need not be used on the valves controlling the flow of the singlings to the still. Seal locks will be used on such other places where the use thereof is required by this part or deemed necessary by the assistant regional commissioner.

§ 221.812 *Plain locks.* Plain locks will be used at all other places in the distillery where locks are required by this part.

§ 221.813 *Custody of locks, keys, and seals.* Storekeeper-gaugers are strictly prohibited from entrusting locks, keys, or seals in their charge to any person other than an internal revenue officer entitled to receive them, and under no circumstances will they permit locks to remain open, whether hanging by the shackle or otherwise.

§ 221.814 *Cap seals.* All unions, flanges, and other pipe connections in the distillery equipment not secured by welding or brazing or similar methods must be securely connected and sealed with seals approved by the Director, Alcohol and Tobacco Tax Division. A special type of seal, serially numbered, has been approved for use in sealing unions, flanges, and other detachable pipe connections. This seal has, for the purpose of identification, been designated a "Cap" seal.

§ 221.815 *Unauthorized removals of seals or locks.* Cap seals or locks affixed by an internal revenue officer must not be removed without authorization from the storekeeper-gauger or assistant regional commissioner: *Provided,* That where the brandy or other property is in imminent danger of loss by fire, flood, or other casualty or where the safety of the distiller or his employees is endangered, and it is impracticable to first obtain authorization from the storekeeper-gauger or the assistant regional commissioner, city or state fire or police officials or the distiller may remove such seals or locks for the purpose of preventing loss of property or of avoiding danger to personnel. When seals or locks are removed without authorization from the storekeeper-gauger or the assistant regional commissioner, the distiller shall notify the storekeeper-gauger as soon as possible. In addition he shall prepare a report for delivery to the assistant regional commissioner through the storekeeper-gauger in charge not later than the close of business on the following day, describing in detail the action taken and the conditions which

impelled such action. Such report shall be signed by the proprietor or his authorized agent, and immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge and belief is true and correct." Where the distiller desires to make changes in the equipment involving the removal of seals, he will follow the procedure prescribed in § 221.273.

(68A Stat. 696; 26 U. S. C. 5682)

§ 221.816 *Removal of cap seals.* Except as provided in § 221.815, cap seals which have been affixed will be removed only by a storekeeper-gauger or some other officer designated for the purpose by the assistant regional commissioner. The officer will destroy all removed cap seals in a manner sufficient to prevent their reuse.

(68A Stat. 698; 26 U. S. C. 5682)

SUBPART LL—OFFICER'S RIGHT OF ENTRY AND EXAMINATION

§ 221.825 *Entry of distillery or premises used in connection therewith.* Under the law, any internal revenue officer may at all times, as well by night as by day, enter any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and, if not admitted upon demand, having declared his name and office, he may break open any doors or windows or break through any of the walls of such premises necessary to be broken to enable him to enter.

(68A Stat. 636; 26 U. S. C. 5196)

§ 221.826 *Authority to break up grounds or walls.* Under the law, any internal revenue officer and any persons acting in his aid may break up the ground on any part of the distillery or premises of a distiller, or any ground adjoining or near any such distillery or premises, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil, and upon finding any pipe or conveyance leading from or to the distillery premises to break up any ground, house, wall or other place through or into which such pipe or conveyance leads, and to break or cut away such pipe or other conveyance.

(68A Stat. 636; 26 U. S. C. 5196)

§ 221.827 *Examination of worm tubs.* Under the law, any internal revenue officer may require the water in any worm tub to be drawn off and the tub and worm cleansed at any time when the still is not at work, and the water must be kept out of the worm tub for 2 hours or until the officer has finished his examination.

(68A Stat. 636; 26 U. S. C. 5196)

§ 221.828 *Distillers to furnish assistance.* Under the law, on demand of any internal revenue officer, every distiller shall furnish convenient ladders to enable the officer to examine any vessel or utensil in his distillery, and shall furnish all assistance, lights, tools, or other things necessary for inspecting the premises and apparatus, and shall open

all doors, boxes, packages, and all casks, barrels, and other vessels not under the control of the internal revenue officer in charge thereof.

(68A Stat. 636; 26 U. S. C. 5196)

SUBPART MM—RULES FOR COMPUTING CAPACITY OF STILL

§ 221.835 *Pot or kettle stills.* The estimated maximum capacity in proof gallons of brandy capable of being produced every 24 hours, which is required to be shown on the distiller's notice, will be computed as follows: The working capacity of pot or kettle stills will be determined by multiplying 80 percent of the cubic capacity of the still by the maximum number of boilings that can be made in 24 hours and then multiplying this result by the percent of alcohol by volume contained in the highest yielding material to be used in distillation. This result will represent the quantity of wine gallons of absolute alcohol that can be distilled in 24 hours. This quantity, when multiplied by 2, will represent the number of proof gallons. For example, if a pot still having a cubic capacity of 2,000 gallons is used, and such still can be charged three times in 8 hours and the highest percentage of alcohol by volume in the distilling material to be used is 8 percent, the brandy-producing capacity of the still will be computed as follows: $2,000 \times 0.8 \times 9 \times 0.08 \times 2 = 2,304$ proof gallons. (The quantity that can be distilled in 24 hours.)

§ 221.836 *Charge chamber stills.* The estimated maximum capacity in proof

gallons of brandy capable of being produced every 24 hours, which is required to be shown on the distiller's notice, will be computed as follows: Where a charge chamber still is used, the estimated maximum quantity of brandy in proof gallons capable of being produced will be determined by multiplying 80 percent of the cubic capacity of the top or charge chamber of the still by the number of times the same can be filled and emptied in 24 hours. This result will represent the total number of gallons of distilling material that can be distilled in 24 hours, which quantity will be multiplied by the percent of alcohol by volume contained in the highest yielding material to be used. The result of such computation will represent the number of wine gallons of absolute alcohol that can be distilled in 24 hours. This quantity, when multiplied by 2, will represent the number of proof gallons. For example, if a charge still is used having a charge chamber of a cubic capacity of 600 gallons which can be charged three times in one hour, and the highest percentage of alcohol by volume in the distilling material to be used is 8 percent, the brandy-producing capacity will be computed as follows: $600 \times 0.8 \times 3 \times 24 \times 0.08 \times 2 = 5,529.6$ proof gallons. (The quantity that can be distilled in 24 hours.)

§ 221.837 *Continuous stills.* The estimated maximum capacity in proof gallons of brandy capable of being produced every 24 hours, which is

required to be shown on the distiller's notice, will be computed as follows: If continuous stills are used, the maximum brandy-producing capacity in proof gallons of such stills will be computed on the area of the column in square feet. The first step will be to determine the inside diameter of the still at its base and the diameter will then be divided by 2 to ascertain the radius. The diameter may be determined (a) by accurately measuring the inside width of the still with a rod or tape, or (b) by measuring the outside circumference of the still and dividing the same by 3.1416 and deducting from the quotient twice the thickness of the sides of the still. The radius (in feet) will be squared and then multiplied by 3.1416 (Pi) to ascertain the area of the column in square feet. The area in square feet will be multiplied by the factor 40 (the number of gallons of 100 proof spirits than can be distilled in one hour per square foot of plate area) and the result will represent the total number of gallons of 100 proof spirits than can be distilled in one hour. This quantity will be multiplied by 24 to determine the number of gallons of 100 proof spirits that can be distilled in one day. For example, if a continuous still having a diameter of 4 feet is used, the brandy-producing capacity will be computed as follows: $2 \times 2 \times 3.1416 \times 40 \times 24 = 12,063.74$ proof gallons. (The quantity that can be produced in 24 hours.)

[F. R. Doc. 54-9866; Filed, Dec. 10, 1954; 11:22 a. m.]

[26 CFR (1954) Part 225]

WAREHOUSING OF DISTILLED SPIRITS

NOTICE OF PROPOSED RULE-MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D. C., within the period of 15 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL]

O. GORDON DELK,
Acting Commissioner
of Internal Revenue.

PART 225—WAREHOUSING OF DISTILLED SPIRITS

Preamble. 1. The regulations in this part shall, as to facts and circumstances arising on and after January 1, 1955, supersede Regulations 10, 1950 edition (26 CFR (1939) Part 185; 15 F. R. 5233) as amended by Treasury Decisions 5806 (15 F. R. 174), 5809 (15 F. R. 198), 5824 (16 F. R. 3), 5842 (16 F. R. 103), 5849 (16 F. R. 148), 5850 (16 F. R. 148), 5871 (16 F. R. 238), 5895 (17 F. R. 3640), 5919 (17 F. R. 6639), 5974 (18 F. R. 499), 6002 (18 F. R. 1913), 6005 (18 F. R. 2139), 6018 (18 F. R. 3440), 6049 (18 F. R. 7173), 6050 (18 F. R. 7191), 6068 (19 F. R. 1928), 6071 (19 F. R. 2779), 6075 (19 F. R. 4025), 6084 (19 F. R. 5059), and 6097 (19 F. R. 5577).

2. These regulations shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced, before the effective date of these regulations.

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BOTTLING OF DISTILLED SPIRITS UNDER AN APPROVED TRADE NAME

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- 225.1170 Exceptions to construction and equipment requirements.
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225.1172 Application.

AUTHORITY: §§ 225.1 to 225.1172 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Statutory provisions interpreted or applied are cited to the text in parentheses.

SUBPART A—SCOPE OF REGULATIONS

§ 225.1 *Warehousing and withdrawal of spirits.* The regulations in this part relate to the warehousing of distilled spirits (other than alcohol), and the bottling in bond, taxpayment and withdrawal thereof from internal revenue bonded warehouses. This part covers the location, construction, equipment, qualifying documents; requirements governing changes in name, proprietorship, premises and equipment, and in the title to the warehouse property; action by the assistant regional commissioner; control, custody, and supervision of the warehouse; deposit of spirits in warehouse; losses of spirits in warehouse or in transit thereto; withdrawal of distilled spirits from warehouse for taxpaid or tax-free purposes; bottling of spirits in bond; alternate operations of bottling-

in-bond department as taxpaid bottling house; transfers in bond between internal revenue bonded warehouses; exportation and shipment of distilled spirits; and records and reports of distilled spirits deposited, stored, bottled in bond and withdrawn from internal revenue bonded warehouses.

§ 225.2 *Forms prescribed.* The Director, Alcohol and Tobacco Tax Division, is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns, and records. Information called for shall be furnished in accordance with the instructions on the forms or issued in respect thereto.

SUBPART B—DEFINITIONS

§ 225.5 *Meaning of terms.* As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

§ 225.6 *Alcohol.* "Alcohol" shall mean spirits produced at industrial alcohol plants established and operated under sections 5301 to 5318 of the Internal Revenue Code.

§ 225.7 *Approved containers.* "Approved containers" shall mean casks, barrels, or similar wooden packages, or drums or similar metal packages, having a capacity of not less than 10 gallons each and, unless specifically excluded, shall also mean tank cars and tank trucks, and pipelines between plants on the same or contiguous premises. For the withdrawal of samples for analysis or testing "approved containers" shall mean any container of less than 10 gallons capacity.

§ 225.8 *Assistant regional commissioner.* "Assistant regional commissioner" shall mean the assistant regional commissioner, Alcohol and Tobacco Tax, who is responsible to, and functions under the direction and supervision of, the regional commissioner of internal revenue.

§ 225.9 *Bonded warehouse or warehouse.* "Bonded warehouse" or "warehouse" shall mean an internal revenue bonded warehouse as defined in this subpart.

§ 225.10 *Bottling-in-bond department.* "Bottling-in-bond department" shall mean that portion of an internal revenue bonded warehouse set aside for the purpose of bottling distilled spirits (other than alcohol) in bond in accordance with the provisions of this part, and may consist of one or more bottling rooms.

§ 225.11 *Carrier.* "Carrier" shall mean any person, company, corporation, or organization, including a distiller, warehouseman, owner, consignor, consignee, or bailee, who transports distilled spirits in any manner for himself or others.

§ 225.12 *Director, Alcohol and Tobacco Tax Division.* "Director, Alcohol and Tobacco Tax Division", shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington 25, D. C.

§ 225.13 *Distilled spirits*. "Distilled spirits" shall mean that substance produced by the distillation of fermented grain, molasses, fruit, or other materials, commonly known as spirits, whisky, brandy, rum, gin, etc., but shall not include alcohol.

§ 225.14 *Distiller*. "Distiller" shall mean the proprietor of a registered distillery or fruit distillery.

§ 225.15 *Distilling season and bottling season*. "Distilling season" and "bottling season" shall mean and be designated as spring or fall, and the spring season shall include the months from January to June, inclusive, and the fall season the months from July to December, inclusive.

§ 225.16 *District director*. "District director" shall mean district director of internal revenue.

§ 225.17 *Domestic strip stamps*. "Domestic strip stamps" shall mean the bottle stamps prescribed under authority of section 5008 I. R. C., for spirits bottled in bond.

§ 225.18 *Export strip stamps*. "Export strip stamps" shall mean the bottle stamps prescribed under authority of section 5243, I. R. C., for spirits bottled in bond for export.

§ 225.19 *Fruit distillery*. "Fruit distillery" shall mean a distillery established and operated under the provisions of Part 221 of this title.

§ 225.20 *Gallon*. "Gallon" or "wine gallon" shall mean a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

§ 225.21 *In bond*. "In bond," as applied to distilled spirits shall mean untaxed distilled spirits possessed under bond on the premises of an internal revenue bonded warehouse, or in transit to such premises from another internal revenue bonded warehouse or from a registered distillery or fruit distillery, or while in transit in other circumstances prior to delivery of the spirits to an authorized consignee.

§ 225.22 *Including*. The word "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.

§ 225.23 *Inclusive language*. Words in the plural shall include the singular, and vice versa, and words in the masculine gender, shall include the feminine, associations, partnerships, and corporations.

§ 225.24 *Internal revenue bonded warehouse*. "Internal revenue bonded warehouse" shall mean a bonded warehouse established or operated under the provisions of this part for the storage of distilled spirits (other than alcohol) on which the tax has not been paid.

§ 225.25 *I. R. C.* "I. R. C." shall mean the Internal Revenue Code of 1954.

§ 225.26 *Person, proprietor, or warehouseman*. "Person," "proprietor" or "warehouseman" shall include natural persons, associations, partnerships, and corporations.

§ 225.27 *Proof*. "Proof" shall mean the ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

§ 225.28 *Proof gallon*. "Proof gallon" shall mean the alcoholic equivalent of a United States gallon at 60 degrees Fahrenheit, containing 50 per cent of ethyl alcohol by volume.

§ 225.29 *Proof spirits*. "Proof spirits" shall mean that alcoholic liquor which contains 50 percent of ethyl alcohol by volume at 60 degrees Fahrenheit and which has a specific gravity of 0.93418 in air at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

(68A Stat. 597; 26 U. S. C. 5002)

§ 225.30 *Proprietor*. "Proprietor" shall mean the operator of the internal revenue bonded warehouse, unless otherwise indicated.

§ 225.31 *Registered distillery*. "Registered distillery" shall mean a distillery established and operated under the provisions of Part 220 of this title.

§ 225.32 *Spirits*. "Spirits" shall mean distilled spirits as defined in this subpart.

§ 225.33 *Tank car*. "Tank car" shall mean a railroad tank car conforming to the requirements of this part.

§ 225.34 *Tank truck*. "Tank truck" shall mean a tank truck conforming to the requirements of this part.

§ 225.35 *Tax gallon*. "Tax gallon" is the unit of distilled spirits upon which the rate of tax prescribed by law is imposed. When spirits are 100 degrees or more of proof, the tax rate is imposed on the proof gallon. When spirits are less than 100 degrees of proof, it is imposed on the wine gallon.

§ 225.36 *U. S. C.* "U. S. C." shall mean the United States Code.

§ 225.37 *Wine spirits*. "Wine spirits" shall mean spirits or brandy produced from distilling material authorized for use in fruit distillery operations, at not less than 140 degrees proof and not reduced with water from distillation proof, but may include commercial brandy aged in wood for a period of not less than two years and barreled at not less than 100 degrees proof.

SUBPART C—LOCATION AND CONSTRUCTION

§ 225.50 *Location restrictions*. Internal revenue bonded warehouses may not be located in any dwelling house, and if under the same roof or in the same building in which is located a rectifying plant or taxpaid bottling house, the two premises must not have means of communication with each other within the building: *Provided*, That where an internal revenue bonded warehouse has heretofore been established in the same building with a rectifying plant or a taxpaid bottling house with interior communication between the two premises, it may continue to operate in such location if the revenue will not be jeopardized thereby: *Provided further*, That when the bottling-in-bond department is oper-

ated temporarily as a taxpaid bottling house, communication between the two premises within the building may continue. Internal revenue bonded warehouses other than those situated upon or contiguous to the premises of a distillery shall be located in important cities or at important shipping points or other places where need for the establishment of the warehouse is clearly shown, as provided in § 225.155. The location must be such that adequate transportation facilities will be available.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.51 *Warehouse buildings*. The buildings or rooms constituting an internal revenue bonded warehouse must be securely constructed of brick, stone, wood, concrete, or other substantial material, and must be completely separated from contiguous buildings or rooms by solid, unbroken walls or partitions of substantial construction: *Provided*, That necessary openings may be permitted in such walls or partitions for the passage of approved pipelines and conduits, as provided in § 225.71, and where a bottling-in-bond department is provided and adjoins the storage portion of the warehouse not more than two doors may be permitted in the wall or partition separating such bottling department from the storage portion of the warehouse, subject to the provisions of § 225.72, or where the warehouse is located on the premises of a fruit distillery and is contiguous to the distilling building or room and operated by the proprietor of the distillery, a door may be permitted in the wall or partition separating the warehouse from such building or room, as provided in the regulations governing the production of brandy (part 221 of this title). No door, window, or similar opening shall be made or permitted in the walls of a bonded warehouse leading into a distillery or into any other room or building, except as provided in this section. Where warehouse buildings are located on the premises of a registered distillery, the walls or partitions separating such warehouse buildings from contiguous buildings not located on the distillery premises must extend from the ground to the roof in a direct vertical line. The foundations, floors, walls, and roofs, and the doors, windows, and other openings of warehouse buildings shall be constructed and such doors, windows, and other openings shall be protected and secured as hereinafter provided. The design and construction of the warehouse must be such as to insure economical supervision by internal revenue officers.

(68A Stat. 640, 643; 26 U. S. C. 5215, 5231)

§ 225.52 *Capacity of warehouse*. Internal revenue bonded warehouses, other than those situated on or contiguous to distillery premises and operated by the distiller (not including lessee distillers), must have a capacity commensurate with the prospective needs of the area or locality in which they are situated and sufficient for not less than 5,000 barrels, including any equivalent thereof in tank or case storage capacity, or any combination of barrel, tank or case storage

facilities. Where the distiller has a warehouse on or contiguous to the distillery premises, and desires to establish a second warehouse, the capacity of such second warehouse must likewise be not less than 5,000 barrels or the equivalent thereof in tank or case storage capacity, except that where the second warehouse is to be established on premises contiguous to, or near, the first warehouse and the necessity for the establishment thereof is due to lack of storage space in the first warehouse and it is impracticable to expand the same, such minimum storage requirements shall not be applicable: *Provided*, That where a second warehouse is to be established by a distiller on premises which are neither contiguous to nor near the first warehouse and it is impracticable to have a warehouse of 5,000 barrels or more capacity in the locality, and the necessity for the establishment thereof is shown, the Director, Alcohol and Tobacco Tax Division, may authorize the establishment of such warehouse.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.53 *Means of ingress and egress.* The doors of an internal revenue bonded warehouse must lead into a public street or into the yard connected with the warehouse, or into the distillery yard if the warehouse is located on or contiguous to a distillery premises: *Provided*, That where the warehouse consists of a room or floor of a building, the door thereof may open into an elevator shaft or common passageway partitioned off from other businesses and leading either directly or through another elevator shaft or similar passageway to the street or yard: *Provided further*, That where the warehouse is located on the premises of a fruit distillery and is contiguous to the distilling building or room and is operated by the proprietor of the distillery, a door may be permitted in the wall separating the warehouse from the distillery, as provided in Part 221 of this title. Where the door of the warehouse opens into a common passageway, as provided in this section, the partitions forming the common passageway shall be substantially constructed of solid materials or expanded metal or woven wire of not less than 9 gauge nor more than 2-inch mesh, and shall extend from the floor to the ceiling or roof, but doors may be provided therein if they do not permit interior communication with a rectifying plant or taxpaid bottling house in the same building. Common passageways must be used exclusively as means of communication.

(68A Stat. 640, 643; 26 U. S. C. 5215, 5231)

§ 225.54 *Foundations.* The foundations of warehouse buildings must be constructed of stone, brick, concrete, or other equally substantial material, extending into the ground. These provisions respecting the foundations shall not, however, be applicable where the warehouse consists of a room or rooms situated above the first floor of the building.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.55 *Floors.* The warehouse buildings must have suitable ground

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floors constructed of wood, concrete, brick, or other equally substantial material. If the warehouse consists of a room or floor situated above the ground or first floor of the building, the first warehouse floor must be so constructed.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.56 *Walls.* The walls of warehouse buildings or rooms must be securely and substantially constructed. If wood, corrugated iron, or tin is used, the same must be applied over solid sheathing for the first 12 feet of height. Where substantial sheet metal is used, and the sheets are welded together in such a manner as to constitute a solid wall, sheathing, if used, may be applied in any manner desired.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.57 *Roofs.* The roofs of warehouse buildings must be securely and substantially constructed. Where corrugated iron or tin is used, the same must be applied over sheathing spaced not greater than 12 inches from board to board. Where substantial sheet metal is used, and the sheets are welded together in such manner as to constitute a solid roof, sheathing, if used, may be applied in any manner desired.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.58 *Doors.* The warehouse must have no more doors than are necessary for the proper and convenient conduct of the business. The outside doors and any inside doors on which Government locks are required must be securely constructed of heavy timber or iron or other equally substantial material. The hinges of the doors must be secured by roundheaded or carriage bolts, nutted and riveted or battered on the inside. Hinges that cannot be thus secured must be inaccessible from the outside and so attached that they cannot be removed when the door is closed. The outside doors, and inside doors on which Government locks are required must be equipped with hasp and staple securely fastened on the inside so that they may be secured with Government locks. The entrance door must be secured on the outside with a Government seal lock. The entrance door to the bottling-in-bond department must also be secured on the outside with a Government seal lock. All other doors required to be locked must be secured on the inside with a Government lock and a cross bar in the middle of the door. Where there are double doors, one of them at least must be provided with substantial bolts at both the top and the bottom. These bolts must be so arranged as to plunge into substantial fastenings or holes in the middle of the upper and lower ends of the frame when the door is closed. Folding doors of wood or metal, vertical or horizontal sliding doors of wood or metal, and metal doors of the roller blind type, must be provided with substantial cross bars, or bolts that plunge into the upper and lower ends or the sides of the door frame, so placed as to make the door rigid and secure, unless the doors operate in grooves or tracks that make them secure.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.59 *Windows.* The windows of the buildings or rooms constituting the warehouse must be constructed and secured as outlined in §§ 225.60 to 225.67.

§ 225.60 *Windows within 12 feet of ground, etc.* All windows located within 12 feet of the ground, or within 12 feet (a) above a fire escape (except as provided in § 225.61), (b) above a roof, set back, or balcony within 12 feet of the ground, (c) above a roof or balcony of an adjoining building, or (d) of a roof, window, or other opening of an opposite building, must conform to the following requirements:

(1) *Wood sash.* Windows consisting of plain or wire glass panes set in wood sash must be protected by iron bars and solid shutters;

(2) *Steel sash.* Windows consisting of wire glass panes not larger than 6 by 10 inches, set in metal sash must be protected by iron bars;

(3) *Detention type.* Windows may be of the detention type, consisting of solid steel frame, sash, and grille (over the ventilating portion), combined in one unit and erected in one piece, equipped with wire glass panes not larger than 6 by 10 inches.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.61 *Opening onto fire escape.* Windows opening onto a fire escape shall be protected by solid metal shutters, securely hinged and equipped with facilities for locking on the inside with a Government lock. Iron bars will not be required on such windows.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.62 *Extension of requirements.* The assistant regional commissioner may require any other windows to be protected by iron bars or shutters, or both, when deemed necessary to safeguard the spirits.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.63 *Windows more than 12 feet from ground.* All windows more than 12 feet from the ground and not subject to the provisions of §§ 225.60 and 225.61 must be securely constructed and so arranged and equipped that they may be securely fastened on the inside.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.64 *Set in casement.* All windows must be securely set into the window casement in such a manner as to prevent removal.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.65 *Sash locks.* All window sashes must be provided with sash locks or other suitable fasteners.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.66 *Shutters.* The shutters must be solid and substantially constructed of metal or wood, and must be fastened inside of the room or building and so secured that they cannot be opened from the outside.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.67 *Iron bars.* The iron bars must be not less than three-fourths of an inch in diameter, placed perpendicularly in the windows or walls, not more

than 5 inches apart from center to center, and reinforced by iron cross bars not more than 36 inches apart. All bars and cross bars must be securely fastened to the window frames or embedded in the walls in such a manner as to prevent their removal and to afford proper security.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.68 *Skylights, monitors, pent-houses, etc.* Skylights, monitors, pent-houses, and similar openings will be regarded as windows and treated as such, except that shutters will not be required.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.69 *Ventilators.* Small openings in outside walls of warehouse buildings and in the ground floors and the roofs thereof for ventilation or heating purposes will be permitted, provided they are protected by substantial metal gratings not lighter than No. 6 gauge and having openings not larger than one-half inch, securely attached to or embedded in the floor, wall, or roof. Where such openings are larger than 6 by 6 inches they shall be further protected by iron bars. Such openings will not be permitted in the walls or floors which separate the storage portion of the warehouse from contiguous rooms or buildings.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.70 *Drains.* Openings in floors (except floors separating the warehouse from other premises) will be permitted for drainage or sewage, provided they are permanently connected to the sewer system and protected in the same manner as ventilators.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.71 *Other openings.* Necessary openings may be permitted in the walls, partitions, ceilings, or floors of warehouse buildings or rooms for the passage of approved steam, water, electric, sewer, or similar lines and spirits lines.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.72 *Bottling-in-bond department.* Where the proprietor of an internal revenue bonded warehouse desires to bottle distilled spirits in bond he must set apart a portion of the warehouse for such purpose. Such portion of the warehouse shall be known as the bottling-in-bond department and shall be used exclusively for the purpose of bottling distilled spirits (other than alcohol) in bond for domestic use or for exportation in accordance with this part. The building or room comprising the department must be so constructed and equipped as to be suitable for the bottling of distilled spirits in bond and to insure efficient and economical supervision by internal revenue officers. No door, window, or other opening into another room or building will be permitted; *Provided*, That necessary openings may be permitted in the walls, floors, ceiling, or partitions separating the bottling-in-bond department from the storage portion of the warehouse for the passage of approved steam, water, electric, sewer, or similar lines and for the passage of approved pipelines for the conveyance of spirits from gauging tanks located in the

warehouse: *And provided further*, That not more than two doors may be permitted in the wall or partition separating the bottling-in-bond department from the storage portion of the warehouse, to be used exclusively for the purpose of transferring spirits to the bottling-in-bond department and return of the bottled product for storage and one opening, provided with a substantial door or other suitable closure equipped for locking on the inside of the bottling-in-bond department, may be permitted in the wall or partition separating the bottling-in-bond department from the empty container storeroom for use in transferring empty cases to the department by conveyor. Communicating doors must be equipped for locking with Government locks on the storage side of the warehouse and must be kept locked except while actually being used for the transfer of spirits. If the bottling-in-bond department is temporarily eliminated from the premises, the communicating doors will be closed and kept locked on the storage side of the warehouse. If the bottling-in-bond department is permanently eliminated from the premises in order that it may be operated as a tax-paid bottling house, or for any other purpose, the doors in the wall separating such rooms or building from the warehouse must be eliminated and the openings permanently boarded or bricked up in such manner as to provide a solid unbroken wall.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.73 *Bottling-in-bond department having more than one bottling room.* Two or more contiguous bottling rooms with separate bottling equipment for each room may be provided, and each such bottling room may, in accordance with the limitations set out in § 225.964, be operated simultaneously with, and independent of, the other bottling rooms. A bottling-in-bond department having more than one bottling room, as provided in this section, will be regarded as a single bottling-in-bond department. A "bottling room" shall consist of a complete set of bottling equipment separated from another such set by a partition constructed of expanded metal or woven wire of not less than 9 gauge nor more than 2-inch mesh, and which shall extend from the floor to the ceiling or roof or to a height of not less than 12 feet. A door or other necessary opening will be permitted in such partitions at such point as will permit adequate supervision of the spirits being bottled in the different rooms. Such rooms shall be designated alphabetically, such as "Bottling Room A," "Bottling Room B," etc.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.74 *Quick-aging room.* Where spirits are to be quick-aged in an internal revenue bonded warehouse by the introduction of a steam pipe or other heating device into the package, a separate room or building to be used exclusively for such purpose should be provided, with separate means of ingress and egress conforming to § 225.53. If a separate building is provided, the construction thereof must conform to the requirements of §§ 225.51 to 225.71.

Where spirits are to be quick-aged by the general application of heat within the warehouse, the proprietor must provide a suitable, separate room which shall not be exposed or subjected to excessive heat for the use of internal revenue officers in performing their duties in connection with the receipt and withdrawal of spirits. A sign must be placed over the entrance door of the quick-aging room bearing the words "Quick-Aging Room."

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.75 *Gauging room.* A separate building, room, or section of the warehouse must be provided for gauging spirits, the construction of which must conform to the requirements of §§ 225.51 to 225.71. Each gauging room must be of sufficient dimensions to permit the work of gauging and related operations to be accomplished efficiently and expeditiously, and shall be provided with necessary office facilities for use of the internal revenue officer in preparing gauge reports; scales for weighing individual packages; and facilities for marking, branding and stamping individual packages. Gauging rooms must be well heated, ventilated, and equipped with permanently installed lighting facilities, properly spaced throughout the room or building, and of sufficient intensity for the efficient performance of gauging duties and supervision of all activities in the gauging room without the aid of auxiliary or outside lights. A sign must be placed over the entrance door of the room or building bearing the words "Gauging Room." Where gauging tanks are provided the construction and installation thereof must conform to the requirements of § 225.112 and the number and capacity of such tanks shall be commensurate with the type and volume of operations conducted.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.76 *Brandy-blending department—(a) Construction.* Where brandies are to be mixed or blended in an internal revenue bonded warehouse, under the provisions of section 5023, I. R. C., for the sole purpose of perfecting such brandies according to commercial standards, a separate room or building, constituting a part of the internal revenue bonded warehouse, must be provided for that purpose. Such room or building shall be known as the brandy-blending department and must be constructed in accordance with the provisions of §§ 225.51 to 225.71. The brandy-blending department must be completely separated from contiguous rooms or buildings by solid unbroken partitions and floors of substantial construction. Such partitions shall extend from the ground to the roof or from the floor to the ceiling, if a room is used, and if the brandy-blending department is under the same roof, or in the same building in which is located a rectifying plant, or taxpaid bottling house, the two premises must not have any means of communication with each other within the building. No door, window, or other opening into another room or building of the warehouse will be permitted: *Provided*, That not more than two doors

may be permitted in the wall or partition separating the brandy-blending department from the storage portion of the warehouse to be used exclusively for the purpose of transferring brandy between the brandy-blending department and the storage portion of the warehouse. The communicating doors must be equipped for locking with Government locks on the storage side of the warehouse and must be kept locked except while brandy is being transferred between the brandy-blending department and the storage portion of the warehouse.

(b) *Equipment.* The brandy-blending department must be equipped with a requisite number of suitable tanks in which to blend brandies, scales for weighing packages, facilities for dumping packages, facilities for filling, marking and branding packages, and a desk and cabinet for use of the internal revenue officer. The room or building must be well lighted, heated, and of sufficient dimensions to permit the work of dumping, filling, gauging, marking, and branding packages efficiently and expeditiously.

(c) *Lighting facilities.* Lighting facilities must be permanently installed and spaced throughout the room or building to permit supervision of the entire premises and must be of sufficient power to permit efficient performance of gauging duties without the aid of auxiliary lights or outside light.

(d) *Sign.* A sign, bearing the words "Brandy-Blending Department," shall be placed over the entrance door of the room or building.

(e) *Other uses of department.* Where brandy-blending operations have been discontinued and all brandies have been removed from the brandy-blending department the locks on the doors connecting the brandy-blending department with the storage portion of the warehouse may be removed and the brandy-blending department used for any other authorized warehouse purpose as provided in § 225.459.

(68A Stat. 606, 643; 26 U. S. C. 5023, 5231)

§ 225.77 *Other rooms.* Where a bottling-in-bond department is established, separate rooms may be provided therein for the dumping, reducing, and bottling of distilled spirits. Such rooms shall be appropriately designated, such as "Dumping Room," "Reducing Room," "Bottling Room," etc.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.78 *Empty package storeroom.* If empty packages (barrels) are to be stored on the warehouse premises, a separate room or building must be provided for such purpose. If a separate room is provided within the warehouse and such room has interior doors communicating with the storage portion of the warehouse, such doors must be equipped for locking with Government locks on the warehouse side and be kept locked at all times except when in actual use and the construction of the walls must meet requirements of § 225.56. If the room has an outside entrance door, such door must be equipped for locking with a Government lock. The room or building provided for the storage of empty packages

may be used for general cooperage purposes. A sign bearing the words "Empty Package Storeroom" must be placed over the entrance door of the empty package storeroom.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.79 *Empty container storeroom.* If empty cases, bottles, and other bottling supplies are kept or stored on the warehouse premises, a separate room or building may be provided for such purpose. Such room or building shall not have any means of interior communication with any other room or building comprising the storage portion of the bonded warehouse. If a separate room or building is not provided for the storage of such supplies, they must be stored in the bottling-in-bond department and kept completely segregated and so stored as not to interfere with proper supervision of the bottling-in-bond department.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.80 *Government office.* The proprietor shall provide and maintain on the warehouse premises for the exclusive use of internal revenue officers, a securely constructed, well-lighted, heated, and ventilated office of suitable dimensions: *Provided*, That where the proprietor operates a distillery on the same or contiguous premises or a bonded wine cellar on contiguous premises, and a Government office conforming to the requirements specified in this section is provided on the distillery or bonded wine cellar premises, and such office is so located as to be suitable for the use of internal revenue officers assigned to the warehouse, a separate Government office need not be provided on the warehouse premises. The Government office shall be equipped with toilet and lavatory facilities, unless such facilities, suitably located, are provided elsewhere on the premises, and with desks, chairs, file cases, and such other furniture as may be necessary for the keeping of Government records and the preparation of reports. The door of the Government office shall be equipped with a cylinder type lock and a sufficient number of keys therefor shall be furnished the assistant regional commissioner for the use of internal revenue officers. Where deemed necessary to afford adequate security to Government property, the assistant regional commissioner may require the windows of the Government office to be protected by shutters or iron bars and the door to be so equipped that it may be securely fastened with a Government lock. A sign must be placed over the entrance door bearing the words "Government Office." Unless the Government office is located immediately adjacent to the bottling-in-bond department, the proprietor must provide either a separate office or desk, chairs, file cases, and such other furniture as may be necessary for the keeping of Government records and the preparation of reports in a suitable and well-lighted space in the bottling-in-bond department. If the bottling-in-bond department is not properly heated during inclement weather, such office facilities must be located in a well-lighted, heated, and ventilated room. Such facilities

shall be subject to approval by the assistant regional commissioner.

(68A Stat. 644, 645; 26 U. S. C. 5231, 5241, 5243)

§ 225.81 *Government room, vault, or cabinet.* There shall be provided in the Government office a metal cabinet of adequate strength and size, or a securely constructed room or vault suitably equipped for locking with a Government seal lock, for use in safeguarding the keys to Government locks, seals, and other Government property and stamps in the custody of internal revenue officers. Each such room, vault, or cabinet shall be subject to approval by the assistant regional commissioner. Unless the Government office is located immediately adjacent to the bottling-in-bond department, similar facilities must also be provided in such department.

(68A Stat. 643, 644, 645; 26 U. S. C. 5231, 5241, 5243)

§ 225.82 *Off-premises export storage room.* If the proprietor of an internal revenue bonded warehouse located at a port of exportation intends to store, pending release for direct exportation or use as supplies on vessels or aircraft, taxpaid distilled spirits or wines bottled or packaged especially for export with benefit of drawback under the provisions of Parts 230, 235 and 252 of this title, a separate room for the storage of such products exclusively must be provided off the bonded premises. The room must be contiguous to the bonded premises and be constructed of substantial, solid materials. All windows, doors, or other openings must be so constructed that they may be securely locked or fastened from the inside, except the entrance door which must be so constructed that it may be securely locked from the outside of the room with a Government seal lock. A sign must be placed over the entrance door of the room bearing the words "Off-Premises Export Storage Room." The deposit of distilled spirits and wines in such room, and the withdrawal thereof, shall be effected in accordance with provisions of Part 252 of this title.

(68A Stat. 614; 26 U. S. C. 5062)

SUBPART D—SIGN

§ 225.100 *Posting of sign.* The proprietor shall place and keep conspicuously on the outside and at the front of the warehouse where it can be plainly seen, a sign exhibiting in plain and legible letters, not less than 3 inches in height, and of a proper and proportionate width, the name of the proprietor and the words "Internal Revenue Bonded Warehouse," followed by the registry number of the warehouse. If the warehouse consists of two or more buildings the required sign will be placed over the entrance of each building, and there shall also be shown on such sign the alphabetical designation of the building. If a bottling-in-bond department is maintained, the proprietor shall also place and keep conspicuously on the outside and at the front of the department, or over the front entrance thereto, where it can be plainly seen, a sign exhibiting in plain and legible letters, the words "Bottling-in-Bond Department."

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

SUBPART E—EQUIPMENT

§ 225.110 *Scales.* The proprietor of the warehouse must provide suitable and accurate scales for the weighing of packages of distilled spirits. The beams or dials of such scales must indicate weight in one-half pound graduations. The beams or dials of tank scales must be graduated to enable readings to be made as follows: to nearest one-half pound for scales having a capacity not to exceed 2,000 pounds; to the nearest 1 pound for scales having a capacity of over 2,000 pounds, but not exceeding 6,000 pounds; to the nearest 2 pounds for scales having a capacity over 6,000 pounds, but not exceeding 20,000 pounds; to the nearest 5 pounds for scales having a capacity over 20,000 pounds, but not exceeding 50,000 pounds; and to the nearest 10 pounds for scales having a capacity over 50,000 pounds. Except in the case of scales having a capacity of 2,000 pounds or less, where spirits are to be gauged for tax-payment, not less than twenty percent of the total capacity of the gauging tank scale may be entered into the tank for gauging for determination of the tax: *Provided*, That the weighing of lesser quantities for determination of tax may be authorized by the assistant regional commissioner where the beam of the scale is calibrated in $\frac{1}{2}$ or 1 pound graduations and it is found by actual test that the scales break accurately at such graduations: *Provided further*, That lots of spirits weighing 1,000 pounds or less must be weighed on scales having one-half pound graduations.

(68A Stat. 639, 643; 26 U. S. C. 5212, 5231)

§ 225.111 *General requirements for tanks.* All tanks used as receptacles for spirits shall be constructed of metal or other suitable material, shall be stationary, and shall be equipped with a suitable measuring device whereby the actual contents will be correctly indicated, and will have plainly and legibly painted thereon an appropriate designation indicating the use thereof, followed by its serial number and capacity in gallons. Where such tanks are of irregular dimensions the warehouseman shall furnish to the assistant regional commissioner a table, in duplicate, showing the capacity of the tank for each inch of depth. The assistant regional commissioner will retain one copy of the table and forward the other to the storekeeper-gauger who will retain the same in the Government office. All tanks must be so constructed as to permit proper examination thereof, and so arranged as to leave an open space of not less than three feet between the top and the roof or floor above. Manheads, inlets, and outlets of the tanks and all openings whereby access may be had to the spirits must be provided with facilities for locking with Government locks or otherwise securely fastened and sealed. Where tanks are equipped with manholes or valves in the top which are required to be locked with Government locks, suitable walks or landings with steps or stairways leading thereto and providing ready access to such manholes or valves must be constructed. Valves must be provided in the pipe connections and be so arranged

as to control completely the flow of spirits, both into and out of such tanks and so constructed that they may be locked with Government locks. The pipe connections of such valves must be brazed, welded, or otherwise secured in such a manner that they cannot be detached or altered without showing evidence of tampering. Tanks used as receptacles for spirits may be permanently connected with pipelines for the conveyance thereto of air and water, but the water pipeline must be affixed to the top of the tank and may not extend into the tank. Such air and water pipelines must be equipped with a control valve which may be locked with a Government lock. Pipes used for the conveyance of air must also be equipped with a check valve located near the point of entry to the tank in order to effectively prevent any abstraction of spirits from the tank. Other pipelines, except those used for the conveyance of spirits, may not be permanently connected with such tanks. Tanks used for gauging shall be mounted on accurate scales.

(68A Stat. 634, 643, 680; 26 U. S. C. 5194, 5231, 5552)

§ 225.112 *Gauging tank.* The proprietor must provide in a warehouse building one or more gauging tanks, constructed in accordance with the provisions of § 225.111, where distilled spirits are to be received by pipeline or by tank car or tank truck for deposit in storage tanks in the warehouse, or where distilled spirits deposited in storage tanks are to be withdrawn therefrom for removal by pipeline or in tank cars or tank trucks, or where distilled spirits stored in packages are to be dumped for bulk gauging: *Provided*, That no gauging tank need be installed on the warehouse premises for gauging (a) distilled spirits received by pipeline which have been gauged in the distillery cistern room (b) wine spirits which are to be gauged by volume in the storage tank or are to be transferred by pipeline from storage tanks direct to a tank in an adjacent bonded wine cellar and gauged therein under the provisions of § 225.917, (c) rum of 150 degrees of proof or more which is to be transferred by pipeline from storage tanks direct to a gauging tank in a denaturing bonded warehouse on the same premises and gauged therein under the provisions of § 225.933, or (d) spirits for redistillation which are to be transferred by pipeline direct to a gauging tank in a distillery on the same or contiguous premises under the provisions of § 225.770. Where a storage tank is mounted on scales, the entire contents of the tank may be removed at one time, and deposits may be made therein on the basis of the scale readings of such tank, without it being necessary to first run such spirits into a gauging tank. A suitable board shall be provided on each gauging tank for the attachment of the gauge report or certificate of tax-payment. If distilled spirits are to be dumped from packages for bulk gauging, the gauging tank must be located in the gauging room.

(68A Stat. 599, 634, 643, 680; 26 U. S. C. 5006, 5194, 5231, 5552)

§ 225.113 *Test weights.* The proprietor shall provide a set of ten 50-pound cast-iron test weights, which shall be certified by the National Bureau of Standards or State departments of weights and measures as conforming to class "C" requirements of the National Bureau of Standards. If the proprietor has provided such test weights at another plant operated by him on the same or contiguous premises, he need not provide a separate set of weights for the warehouse. All test weights shall be placed under the control and in the custody of the storekeeper-gauger in charge, who shall keep them under Government lock when not in use.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.114 *Testing gauging and storage tank scales—(a) Not over 500 gallons.* Scales used for weighing spirits in lots of not over 500 gallons will be tested from time to time under the supervision of the storekeeper-gauger by means of test weights provided in accordance with § 225.113. Such scales will be tested by placing the prescribed test weights on the scales and checking the weight registered on the beam of the scales. The test weights will then be removed without disturbing the beam and the gauging tank filled with spirits or water to the same weight, whereupon the test weights will again be placed upon the scales, the spirits or water being retained in the tank and the weight registered on the beam checked. This operation will then be continued until the scales have been checked in 500-pound ranges at all weights for which the scales are used.

(b) *Over 500 gallons.* Proprietors will have scales used for weighing spirits in larger lots tested and their accuracy certified by State, county, or city departments of weights and measures or by a responsible scale company at intervals of not more than six months. Officers will see that the proprietors have the scales of gauging tanks, used for weighing distilled spirits in lots of more than 500 gallons, tested and their accuracy certified by State, county, or city departments of weights and measures or by a responsible scale company at intervals of not more than 6 months. Officers will also check, at least once a month, the gallonage represented to be on the scale against the gallonage indicated by a volumetric determination of the contents of the tank. Such volumetric determination will be made by (1) accurately ascertaining the proof and the temperature of the distilled spirits and the depth of the liquid in the tank by means of a steel tape, (2) multiplying the depth in inches by the capacity of the tank for 1 inch of depth, and (3) correcting the volume to 60 degrees Fahrenheit in accordance with table No. 7 of the Gauging Manual (Part 186 of this title). The corrected gallons thus determined will be compared with the gallons represented by the reading of the beam of the scale. Unless the volumetric check is within 0.5 percent of the quantity shown to be in the tank, the internal revenue officer will take appropriate steps to have the accuracy of the scales verified. In addition to the volu-

metric check described, officers will, as frequently as conditions indicate the necessity therefor, test weighing tank scales of large capacity in the manner prescribed for smaller capacity gauging tank scales, except that such tests on large capacity gauging tank scales may be made when they contain considerable quantities of liquid. In this case the beam will be carefully balanced, and test weights will be added to the load, one at a time, until the range of 500 pounds is checked. At any time an officer finds a scale to be inaccurate, he will require the proprietor to have such scale adjusted and its accuracy certified.

(68A Stat. 639, 643; 26 U. S. C. 5212, 5231)

§ 225.115 *Accuracy of scales.* In addition to the volumetric check described, officers will, as frequently as conditions indicate the necessity therefor, test gauging tank scales of large capacity in the manner prescribed for smaller capacity gauging tank scales, except that such tests on large capacity gauging tank scales may be made when they contain considerable quantities of liquid. In this case the beam will be carefully balanced, and test weights will be added to the load, one at a time, until the range of 500 pounds is checked. At any time an officer finds a scale to be inaccurate, he will require the proprietor to have such scale adjusted and its accuracy certified by a State, county, or city department of weights and measures or by a responsible scale company.

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.116 *Storage tanks.* A sufficient number of storage tanks constructed in accordance with the requirements of § 225.111 must be provided in the warehouse to permit the expeditious deposit of spirits within the limitations of § 225.377.

(68A Stat. 634, 643; 26 U. S. C. 5194, 5231)

§ 225.117 *Storage tanks outside warehouse building.* The assistant regional commissioner may approve permanent storage tanks not located within a room or building as an addition to an internal revenue bonded warehouse: *Provided*, That such tanks are constructed, equipped, and enclosed as required in this section. The tank, or tanks, shall be of substantial metal construction and shall be erected on a solid concrete base or foundation. Each storage tank shall have plainly and legibly painted thereon, or on a plate securely attached thereto, the words "Storage Tank," followed by its serial number and capacity in gallons. The inlet and outlet pipe connections of each storage tank must be fitted with valves so constructed that they can be secured with Government locks, and any other openings in such tanks must also be so constructed that they can be closed and locked. The tanks shall be completely enclosed by a fence, imbedded securely in a concrete foundation extending not less than eighteen inches below the ground, at least 10 feet in height, constructed of not less than No. 6 gauge, nor more than 2-inch mesh, expanded metal or woven wire, with at least three rows of barbed wire superimposed on the top thereof. The fence posts shall be

substantially constructed of iron or steel. A suitable gate in such fence shall be provided, which gate shall be of the same construction as the fence, and shall be equipped with hasp and staple for the reception of a Government seal lock. The storage tanks shall be connected with approved gauging tanks in the internal revenue bonded warehouse building by permanent and continuous pipelines constructed in accordance with § 225.124, and so arranged as to be exposed to view throughout their entire lengths. All valves, unions, flanges, and other detachable connections in the pipelines and openings in the tanks must be so secured, by brazing, welding, fastening and sealing, or locking with Government locks, as to effectually prevent disconnection and access to the spirits. The assistant regional commissioner may require, in any case in which he deems it necessary, either the installation of electric flood lights for lighting the tank enclosure, or the maintenance of watchman's services, or both, or other protective measures or devices.

(68A Stat. 634, 643, 680; 26 U. S. C. 5194, 5231, 5552)

§ 225.118 *Brandy-blending tanks.* Brandy-blending tanks shall be constructed, installed, and equipped in the manner prescribed in § 225.111 for the construction, installation, and equipment of storage tanks. Each such tank shall have plainly and legibly painted thereon, or on a plate securely attached thereto, the words "Brandy-Blending Tank," followed by its serial number and capacity in gallons.

(68A Stat. 606, 643, 680; 26 U. S. C. 5023, 5231, 5552)

§ 225.119 *Tanks in bottling-in-bond department.* Where a bottling-in-bond department is established, the proprietor must provide one or more bottling tanks. Spirits may be dumped and reduced in bottling tanks, or the proprietor may provide dumping tanks, reducing tanks, or combination dumping and reducing tanks. All tanks must be constructed, equipped, and designated in accordance with the requirements of § 225.111. Each bottling, reducing, or dumping tank must also be equipped with a suitable board for the attachment of Form 1515. Such tanks may be mounted on scales.

(68A Stat. 628; 26 U. S. C. 5173)

§ 225.120 *Gravity tanks.* The proprietor may, if necessary, install a small gravity tank between the bottling tanks and bottling machine, for the purpose of maintaining a constant head pressure or to afford a gravity flow to the bottling machine. Such tank must be so arranged that it can be filled only through the bottling tanks by a continuous, permanent, pipeline, and shall be permanently connected with the bottling machine by a permanent pipeline, equipped with a valve for locking with a Government lock: *Provided*, That where the bottling tanks are mounted on scales or the construction of the bottling machine is such that the connections therewith must be flexible, the respective pipelines may be connected with the outlets of the bottling tanks, or with the

bottling machine, as the case may be, by short, detachable hose connections. Where the pipeline is connected with the outlets of the bottling tanks or the bottling machine by such detachable hose connections, the ends of such pipelines on which the hose connections are made must be equipped with valves for locking with Government locks, or secured and sealed in such a manner that the hose connections may not be detached without showing evidence of having been detached or tampered with. The capacity of the gravity tank shall be no larger than necessary, and the manhead shall be equipped for locking with a Government lock. Gravity tanks must be equipped with a suitable measuring device whereby the contents will be correctly indicated, and each such tank shall have plainly and legibly marked thereon the words "Gravity Tank," followed by its serial number and capacity in gallons.

(68A Stat. 645, 680; 26 U. S. C. 5243, 5552)

§ 225.121 *Accumulation tanks.* Where the proprietor removes distilled spirits from the bottling line in the bottling-in-bond department which contain sediment or foreign matter, or which otherwise require refiltering or rebottling, he may install suitable accumulation tanks in the bottling-in-bond department for the accumulation of such spirits. Each such tank shall have plainly and legibly painted thereon the words "Accumulation Tank," followed by its serial number and capacity in gallons. The distilled spirits so accumulated must be returned to the bottling system for refiltering and bottling with the same batch of spirits except as provided in § 225.977. The return of the spirits to the bottling system must be under the supervision of the storekeeper-gauger.

§ 225.122 *Distilled water tanks.* If the proprietor produces distilled water on the warehouse premises, or receives the same by pipeline from a distillery on the same or contiguous premises, distilled water tanks shall be provided and so located that their contents may be readily inspected by internal revenue officers. Each such tank shall be equipped with a suitable measuring device whereby the actual contents will be indicated, and shall have plainly and legibly marked thereon the words "Distilled Water Tank," followed by its serial number and capacity in gallons.

(68A Stat. 645, 680; 26 U. S. C. 5243, 5552)

§ 225.123 *Water stills.* Water stills may be provided, and if so, there must be a clear space of not less than 1 foot around them. Every such still must have plainly and legibly painted thereon the words "Water Still," followed by its serial number and capacity in gallons. Water stills shall be connected with distilled water tanks by continuous, permanent pipelines.

(68A Stat. 645, 680; 26 U. S. C. 5243, 5552)

§ 225.124 *Pipelines.* Pipelines for the conveyance of spirits in the warehouse, or to and from tank car or tank truck loading areas, or other establishments on the same or contiguous premises, shall be of a fixed and permanent character,

constructed of metal or other suitable material affording necessary protection, and so arranged as to be exposed to view in their entirety. All valves, unions, flanges, and other detachable connections in such pipelines must be so secured by brazing, welding, fastening, and sealing, or locking with Government locks, as to effectually prevent disconnection and access to the spirits. The connections of such pipelines with tanks, or dump troughs shall be secured in like manner: *Provided*, That pipelines may be connected with tanks mounted on scales by means of flexible metal hose with the ends brazed or welded to the inlet or outlet of the tank and to the pipeline, or by means of short, detachable hose connections if the end of the pipeline is fitted with a valve so constructed that it may be secured with a Government lock. The pipeline may likewise be connected with tank cars or tank trucks by short detachable hose connections. Except as provided in § 225.580, a separate pipeline must be installed to each plant to which transfer of distilled spirits by pipeline is authorized, or for the loading or unloading of tank cars or tank trucks: *Provided*, That the assistant regional commissioner may approve a single pipeline where proper manifold connections, affording adequate control of the transfer of spirits to each establishment, are provided in the pipeline. Such pipelines may be connected only to the tanks to or from which transfer of spirits is authorized, except, where two or more tanks are used for the same purpose, manifold connections may be used. Manifold connections must be equipped with valves which may be secured with Government locks and so arranged as to permit complete control of spirits into or out of each tank. There shall be painted on each pipeline extending to and from a manifold a legend showing the kind and serial number of the tank or the type and registry number of the contiguous establishment with which the pipeline is connected. Where there are separate pipelines leading directly from a tank to a tank car or tank truck loading zone or an establishment on the same or contiguous premises, a legend indicating the use of such pipeline or the type and registry number of the contiguous establishment shall be painted thereon. Pipelines must be so arranged as to permit complete drainage or emptying thereof after each transfer of spirits. Pipelines used for conveying the following substances shall be kept painted in the colors indicated, and other pipelines may not be painted in these colors:

Distilled spirits.....	Black.
Water	White.
Steam	Aluminum.
Air	Orange.
Refrigerants	Purple.

(68A Stat. 599, 634, 643, 680; 26 U. S. C. 5006, 5194, 5231, 5552)

§ 225.125 *Preparation for sealing.* Where flanges, unions, valves, and other detachable connections in the pipelines are not secured by welding or brazing, and are not to be secured by Government locks, they must be prepared by the pro-

prietor for sealing with "cap" seals. Flanges, unions, and valves will be prepared for sealing, in accordance with the following instructions:

(a) *Sealing flanges.* Flanges may be prepared for sealing by one of the following methods:

(1) By applying a "castle" nut with a hole drilled through the bolt, so the sealing wire may be passed through like a cotter pin, two such nuts being applied to each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three such nuts will be applied at approximately equal distances apart;

(2) By drilling a small hole through both nut and bolt, two such bolts and nuts being drilled for each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three such bolts and nuts applied at approximately equal distances apart must be drilled for sealing; or

(3) By drilling a hole through the corner of the head of the bolt and one through the corner of the nut so that the two will be sealed together, two such bolts and nuts being drilled for each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three such nuts will be applied at approximately equal distances apart.

(b) *Sealing unions.* Unions will be prepared for sealing by inclosing the same in a metal box with holes for the sealing wire.

(c) *Sealing valves.* Small gate and globe valves may be prepared for sealing by inclosing the packing nut and hood with a metal band or strap drawn tightly around the flange and fitted for reception of the sealing wire, or by drilling a hole in the packing nut so that sealing wire may be passed through and drawn around the pipe and sealed. Where valves have large flanges, such flanges may be sealed in the same manner as other flanges.

(68A Stat. 628; 26 U. S. C. 5173)

§ 225.126 *Securing pipelines.* Pipelines shall be so secured at points of entering or passing from the warehouse as to prevent any communication with the warehouse at such points, except by transit through the pipeline when the valve is open. The storage tank connections in the pipeline from the distillery shall be fitted at the inlet of each such tank with a valve which can be secured with a Government lock, and such connections must be so arranged as to control completely the flow of spirits separately into each tank. Each pipeline not directly connected with a storage tank shall be fitted at the end inside the warehouse with a valve so constructed that it may be locked. No pipeline may be used until it has been inspected and the assistant regional commissioner has approved the same.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.127 *Hydrometers.* Proprietors of internal revenue bonded warehouses will obtain hydrometer sets for their own use in determining the proof of spirits.

(68A Stat. 639; 26 U. S. C. 5212)

§ 225.128 *Warehouses heretofore established.* Internal revenue bonded warehouses heretofore established may continue to operate if the present construction and equipment afford adequate security and protection to the revenue. The assistant regional commissioner may at any time require the proprietor to make changes in construction and equipment conforming to the provisions in this part, if deemed necessary to safeguard the revenue or to permit more economical and efficient supervision by internal revenue officers. All warehouses hereafter established and changes in existing warehouses must be in conformance with the provisions in this part.

(68A Stat. 643; 26 U. S. C. 5231)

SUBPART F—QUALIFYING DOCUMENTS

§ 225.150 *Application, Form 27-D.* Every person desiring to establish an internal revenue bonded warehouse shall file application therefor on Form 27-D, in triplicate, with the assistant regional commissioner. Except as provided in § 225.156, in the case of amended and supplemental applications, all information indicated by the lines on the form and the instructions printed thereon, or issued in respect thereto, and in this part shall be furnished. Applications on Form 27-D must be signed and verified in accordance with the instructions printed on the form. Such applications must be numbered serially, commencing with number 1 and continuing in regular sequence for all applications thereafter filed, whether amended or supplemental. All data, written statements, affidavits, and other documents submitted in support of the application shall be deemed to be a part thereof.

(68A Stat. 643, 645, 748, 749; 26 U. S. C. 5231, 5243, 6061, 6065)

§ 225.151 *Permit required.* Under the Federal Alcohol Administration Act and the regulations issued pursuant thereto (Part 1 of Title 27 of the Code of Federal Regulations), any person, except an agency of a State or political subdivision thereto, or any officer or employee of any such agency, intending to engage in the business of bottling distilled spirits, is required to procure a permit therefor.

(Sec. 3, 49 Stat. 978; 27 U. S. C. 203)

§ 225.152 *Title to premises.* The applicant's title to, or interest in, the warehouse premises shall be shown on Form 27-D. If the applicant is the owner of the premises, the amounts of all mortgages or other encumbrances thereon, and the names of the holders thereof, shall be stated. If the warehouse is occupied under a lease, the name of the owner, the name of the lessor, the length of the term and the date of its expiration, shall be stated.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.153 *Description of premises.* The application shall contain a complete description of the building or room constituting the warehouse, including the height, width, and length, the materials of which constructed, the means of ingress and egress, and the manner of securing windows and doors and other

openings. If the warehouse consists of an entire building, the number of stories and the height of each story shall be given. If the warehouse consists of a room or floor of a building, an exact description of the building in which the room or floor is situated and its precise location therein shall be given. If the warehouse consists of separate buildings, the same shall be designated alphabetically, as "Building A," "Building B," etc., and each shall be described separately and the capacity, in barrels, cases, or tanks of each given. Each floor of each building shall be described separately, unless the dimensions and construction of all floors are identical and are used for the same purpose. If a bottling-in-bond room or a brandy-blending department is provided, it will be separately described as to location, construction and security. The designated serial number and capacity of each tank and other apparatus, and the daily bottling capacity in gallons shall also be stated. A separate description of each quick-aging room or gauging room shall be given. The Government office shall be separately described in the application, the location, construction, and equipment thereof being shown. Pipelines for transfer of distilled spirits to or from other establishments on the same or contiguous premises shall be described and names of proprietors and registry numbers of contiguous establishments to or from which transfers of spirits will be made shall be given.

(68A Stat. 606, 643, 645; 26 U. S. C. 5023, 5231, 5243)

§ 225.154 *Capacity.* The total capacity in barrels, exclusive of storage tanks, of all buildings or units constituting the warehouse shall be stated on Form 27-D. The capacity of the warehouse must conform to the applicable requirements specified in § 225.52

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.155 *Necessity for establishment.* A statement in detail respecting the necessity for the establishment of the warehouse must be furnished in the application, unless the warehouse is to be operated by the distiller (not including lessee distillers) on or contiguous to his distillery premises. This statement must show the approximate quantity of spirits that will be received, stored, and withdrawn annually, the probable number of depositors of spirits, the approximate number of dealers to be served with spirits withdrawn from the warehouse, whether spirits will be bottled, either in bond or commercially, together with any other data indicating the prospective volume of business at the warehouse. The applicant in such case shall submit with the application sworn statements from distillers respecting their intention to deposit spirits in the warehouse, and showing the initial deposit and the estimated quantity and frequency of subsequent deposits. Certified copies of contracts for the storage of spirits in the warehouse, in the event of its establishment, will be submitted in support of the application in such case. The transportation facilities available shall be completely described in the application,

except where the warehouse is an original warehouse to be operated by the distiller on or contiguous to the distillery premises. If the warehouse is a second warehouse which the distiller desires to have established contiguous to, or near, such original warehouse on account of lack of storage space in the original warehouse and inability to expand the same, such fact must be established, but data respecting the number of depositors, dealers to be served, and transportation facilities, and statements and contracts of other depositing distillers, need not be submitted.

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.156 *Amended and supplemental applications.* Amended and supplemental applications on Form 27-D may be executed in skeleton form, except as to the items amended or supplemented. All other items which are correctly set forth in prior applications, and in which there has been no change since the last preceding application, may be incorporated in the amended or supplemental application by reference to the respective application previously filed in which the item is fully and correctly set forth. Such incorporation by reference shall be made by entering for each such item in the space provided therefor the statement "No change since filing Form 27-D, Serial No. _____" (the number being inserted), followed by the date of the form. The assistant regional commissioner, at any time in his discretion, may require the filing of a complete application on Form 27-D. Every proprietor of an internal revenue bonded warehouse located at a port of exportation and desiring to establish an off-premises export storage room, as authorized by § 225.82, shall file a supplemental application therefor on Form 27-D, giving the location and description of the room.

(68A Stat. 614; 26 U. S. C. 5062)

§ 225.157 *Corporate documents.* There must be submitted with, and made a part of, the original or initial application on Form 27-D, by a corporation desiring the establishment of an internal revenue bonded warehouse, properly certified copies, in triplicate, of the following documents:

- (a) Articles of incorporation and any amended articles of incorporation.
- (b) Certificate of incorporation.
- (c) Certificate authorizing the corporation to operate in State where warehouse is located, if other than that in which incorporated.
- (d) Extracts of minutes of meetings of stockholders, showing election of directors.
- (e) By-laws.
- (f) Extracts of the minutes of meetings of the Board of Directors, showing the election of officers.
- (g) Extracts of the minutes of meetings of the Board of Directors authorizing certain officers or other persons to sign for the corporation.
- (h) List of the names and addresses of the officers and directors.
- (i) List of stockholders, as provided in § 225.158.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.158 *List of stockholders.* In the case of corporations and similar legal entities, there must be submitted with Form 27-D at the commencement of business, and annually thereafter on May 1, a list of the names and addresses of all stockholders and other persons interested in the corporation or other legal entity, and the amount and nature of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him: *Provided*, That where more than 20 persons are interested in the corporation or other legal entity as stockholders or otherwise, there need be furnished only the names and addresses and the amounts and nature of the stockholding or other interest of the 20 persons having the largest ownership or other interest of each of the respective classes of stock or other interest, except where more complete information shall be specifically required by the assistant regional commissioner: *Provided further*, That where there has been no change in the list of stockholders and other persons interested in the corporation or other legal entity, the proprietor may furnish, in lieu of the annual list, a certified statement, in triplicate, to that effect. Where a corporation operates two or more internal revenue bonded warehouses or other plants situated in the same region, or wholly owns one or more subsidiaries operating such warehouses or other plants so situated, and in connection with qualifying for the operation of one of such warehouses or plants, files a list of stockholders and other persons interested as prescribed in this section, the filing of an additional list for each warehouse will not be required: *Provided*, That in lieu of such additional list there is submitted a certificate, in triplicate, definitely identifying the corporation and plant with whose application or notice the list of stockholders and other persons interested is filed, and giving the date of filing thereof.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.159 *Affidavit.* In the case of a corporation there must be submitted with each list of stockholders an affidavit, in triplicate, executed by an officer of the corporation authorized so to do, showing the number of shares in each class of stock or other evidence of ownership, such as voting trust certificates authorized and outstanding, the par value thereof and the voting rights of the respective owners or holders, and certifying to the correctness of the list of stockholders, or the statement authorized to be furnished with the application in lieu of such list. In the case of an individual owner or partnership, there must be submitted with Form 27-D at the commencement of business, and annually thereafter on May 1, an affidavit, in triplicate, giving the name of every person interested or to be interested in the warehouse, whether such interest appears in the name of the interested party or in the name of another for him.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.160 *Articles of partnership or association.* In the case of a partnership or association, a certified copy, in triplicate, of the articles of partnership or association, if any, shall be submitted with, and constitute a part of, the application, Form 27-D.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.161 *Trade name certificate.* Where the applicant is to do business under a firm or trade name, there must be submitted with and made a part of the application, Form 27-D, certified copies, in triplicate, of the certificate or other document filed with or issued by State officials under the laws of the State to cover the transaction of business under such firm or trade name. If no such certificate or other document is required by the laws of the State to be filed with or issued by State officials to cover the transaction of business under a firm or trade name, the applicant shall furnish a statement, in triplicate, to that effect.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.162 *Power of attorney, Form 1534.* If the application or other qualifying documents are signed by an attorney in fact for an individual, partnership, association, or corporation, or by one of the members for a partnership or association, or in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 225.157, such application or other qualifying documents must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same. Such powers of attorney will be executed on Form 1534, in triplicate, and submitted to the assistant regional commissioner.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.163 *Execution of power of attorney.* Where the principal giving the power of attorney is an individual, it must be executed by him in person, and not by an agent. In the case of a partnership or association, powers of attorney authorizing one or more of the members, or another person, to execute documents on behalf of the partnership or association must be executed by all of the members constituting the partnership or association. However, if one or more members less than the whole number constituting the partnership or association have been delegated the authority to appoint agents or attorneys in fact, the power of attorney may be executed by such member or members, provided it is supported by a duly authenticated copy, in triplicate, of the document conferring authority upon the member or members to execute the same. Where, in the case of a corporation, powers of attorney are executed by an officer thereof, such documents must be supported by triplicate copies of the authorization of such officer so to do, certified by the secretary or assistant secretary of the corporation, under the corporate seal, if any, to be true copies.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.164 *Duration of power of attorney.* Powers of attorney authorizing the execution of documents on behalf of

a person engaged, or intending to engage, in the business of an internal revenue bonded warehouseman shall continue in effect until written notice, in triplicate, of the revocation of such authority is received by the assistant regional commissioner, unless terminated by operation of law.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.165 *Transportation and warehousing bond, Form 1571.* Every person desiring to establish an internal revenue bonded warehouse shall, upon filing his application, Form 27-D, execute bond on Form 1571, in triplicate, in conformity with the provisions of Subpart G of this part, and file the same with the assistant regional commissioner. The penal sum of such bond shall be not less than the amount of internal revenue tax at the rate prescribed by law on the quantity of distilled spirits that will be stored in such warehouse and in transit thereto at any one time, including distilled spirits bottled for export, plus the amount of additional tax at the rate of 30 cents a proof gallon attaching to brandy blended under the provisions of section 5023, I. R. C., that will be on hand or in transit to the warehouse at any one time: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000 for each such warehouse. Proprietors of internal revenue bonded warehouses desiring to blend brandies under the provisions of section 5023, I. R. C., and having on file Form 1571, revised December 1941 or revised prior to such time shall file consent of surety on Form 1533 to cover the blending of brandies and the additional tax liability.

(68A Stat. 606, 643; 26 U. S. C. 5023, 5231, 5232)

§ 225.166 *Plat and plans.* Every person desiring to establish an internal revenue bonded warehouse must submit to the assistant regional commissioner with his application, Form 27-D, an accurate plat of the warehouse premises and accurate plans of the buildings, apparatus and equipment, in triplicate, conforming to the requirements of Subpart H of this part.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.167 *Additional information.* The assistant regional commissioner may at any time, in his discretion, require the proprietor to furnish such additional information as he may deem necessary.

(68A Stat. 643; 26 U. S. C. 5231)

SUBPART G—BONDS AND CONSENTS OF SURETY

§ 225.190 *General requirements.* Every person required to file a bond or consent of surety under the provisions in this part shall prepare and execute it on the prescribed form, in triplicate, in accordance with the provisions in this part and the instructions printed on the form, and shall submit it to the assistant regional commissioner. The bonds required by the provisions in this part shall be given with corporate surety or collateral security.

(28 Stat. 279, 40 Stat. 1148 as amended, 68A Stat. 643, 645, 647, 679, 900; 6 U. S. C. 6, 15, 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.191 *Corporate surety.* Surety bonds may be given only with surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds, subject to the limitations prescribed by the Secretary in Treasury Department Form 356—Revised, and subject to such amendments as may be issued from time to time.

(28 Stat. 279, 36 Stat. 241, 68A Stat. 643, 645, 647, 679, 900; 6 U. S. C. 6, 8, 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.192 *Two or more corporate sureties.* A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties: *Provided*, That each corporate surety may limit its liability in terms upon the face of the bond in a definite, specified amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in Treasury Department Form 356—Revised. When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required penal sum of the bond.

(28 Stat. 279, 36 Stat. 241, 68A Stat. 643, 645, 647, 679, 900; 6 U. S. C. 6, 8, 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.193 *Powers of attorney.* Powers of attorney and other evidence of appointment of agents and officers executing bonds on behalf of corporate sureties are required to be filed with, and passed upon by, the Commissioner of Accounts, Surety Bonds Branch, Treasury Department. Such powers and other evidence of appointment need not be filed with, or submitted to, assistant regional commissioners.

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.194 *Interest in business.* The surety must have no interest whatever in the business covered by the bond.

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.195 *Deposit of collateral.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate sureties in accordance with the provisions of Department Circular No. 154, revised (31 CFR, Part 225): *Provided*, That United States Savings, Defense Savings, and War Savings Bonds issued under the authority of section 22 of the Second Liberty Bond Act, as amended, and other bonds and notes of the United States, which are not transferable or the hypothecation of which will not be recognized by the Treasury Department, may not be pledged and deposited as security in lieu of corporate sureties.

(61 Stat. 646; 6 U. S. C. 15)

§ 225.196 *Consents of surety.* Consents of surety to a change in the terms of a bond must be executed on Form 1533, in as many copies as are required of the bond which they affect, by the principal and all sureties with the same formality and proof of authority to execute as are

required for the execution of bonds. Form 1533 will be used by obligors on collateral bonds as well as those on surety bonds. The Form 1533 must properly identify the bond affected thereby and state specifically and precisely what is covered by the extended terms thereof. The consent may be executed for the surety company by an agent or attorney in fact duly authorized so to do by power of attorney filed by the surety with the appropriate assistant regional commissioner, or the consent may be executed by the home office officials of such surety.

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.197 Approval required. No individual, firm, partnership, corporation, or association intending to commence business as the proprietor of an internal revenue bonded warehouse shall commence such business until the required transportation and warehousing bond, Form 1571, has been approved.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.198 Authority to approve. Assistant regional commissioners are authorized to approve all bonds and consents of surety required by this part.

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.199 Additional or strengthening bonds. In all cases where the penal sum of the bond on file and in effect is not sufficient, computed as prescribed by law and this part, the principal may give an additional or strengthening bond in a sufficient penal sum, provided the surety thereon is the same as on the bond already on file and in effect; otherwise a new bond covering the entire liability will be required. As such additional or strengthening bonds are filed to increase the bond liability of the principal and the surety, they are in no sense substitute bonds, and the assistant regional commissioner will refuse to approve an additional or strengthening bond where any notation is made thereon intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full penal sum. Additional or strengthening bonds must show the current date of execution and the effective date in the blank spaces provided therefor. Such bonds must have marked thereon, by the obligors at the time of execution, "Additional Bond," or "Strengthening Bond."

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.200 New bond. When, in the opinion of the assistant regional commissioner, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason, the principal will be required to give a new bond. A new bond shall be required immediately in the case of the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or

liquidating the business of the principal, must execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where a bond is found to be not acceptable, the principal shall be required to file immediately a new and satisfactory bond, or discontinue business forthwith.

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

§ 225.201 Superseding bond. Where a new bond is submitted by the principal to supersede a bond or bonds then in effect, and such superseding bond has been approved, notice of termination of the superseded bond may be issued as provided in Subpart O of this part. Superseding bonds must show the current date of execution and the date they are to be effective, and each such bond shall have marked thereon, by the obligors at the time of execution, "Superseding Bond."

(68A Stat. 643, 645, 647, 679, 900; 26 U. S. C. 5231, 5232, 5243, 5247, 5522, 7510)

SUBPART H—PLATS AND PLANS

§ 225.220 Plat and plans required. Every person intending to engage in business as the proprietor of an internal revenue bonded warehouse must, as provided in § 225.166, file an accurate plat and accurate plans of the warehouse premises, apparatus, and equipment, in triplicate, with the assistant regional commissioner.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.221 Preparation. Every plat and plan shall be drawn to scale, and each sheet thereof shall bear a distinctive title and the complete name and address of the proprietor, enabling ready identification. The cardinal points of the compass must appear on each sheet, except those of elevational plans. The minimum scale of any plat will not be less than $\frac{1}{80}$ inch per foot. Each sheet of the original plat and plans shall be numbered, the first sheet being designated number 1, and the other sheets numbered in consecutive order. Plats and plans shall be submitted on sheets of tracing cloth, opaque cloth, or sensitized linen. The dimensions of plats and plans shall be 15 by 20 inches, outside measurement, with a clear margin of at least 1 inch on each side of the drawing, lettering, and writing. Plats and plans may be original drawings, or reproductions made by the "ditto process," or by blue or brown line lithoprint, if such reproductions are clear and distinct.

(68A Stat. 643; 26 U. S. C. 5231)

225.222 Depiction of warehouse premises. Plats must show the outer boundaries of the warehouse premises by courses and distances, in feet and inches, in a color contrasting with those used for other drawings on the plat, and the point of beginning with respect to its distance and bearings from some near and well-known landmark must be shown. The plat must also contain an accurate depiction of the building, or buildings, comprising the premises, and

any driveways, public highway, or railroad right-of-way adjacent thereto, or connecting therewith. The depiction of the premises on the plat should agree with the description thereof in the application, Form 27-D. If the premises are separated by a public highway or railroad right-of-way, and the tracts of land comprising the premises, or parts thereof, abut on such highway or right-of-way opposite each other, the different tracts will be depicted separately by courses and distances, in feet and inches, and outlined in a color contrasting with those used for other drawings on the plat. If two or more buildings are to be used, they must be shown in their relative positions and the alphabetical designation of each indicated. If the warehouse consists of a room or floor of a building, an outline of the building, the precise location, and the dimensions of the room or floor, and the means of ingress from and egress to a public street or yard, shall be shown. All first floor exterior doors of each building will be shown on the plat. Except as provided in § 225.227, all pipelines leading to or from the premises, the purpose for which used, and the points of origin and termination, will be indicated on the plat.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.223 Contiguous premises. Where a distillery, or rectifying plant, or tax-paid bottling house, or other premises on which liquors are manufactured, stored, or sold, is contiguous to the warehouse premises the plat must show the relative location of the warehouse and such contiguous premises, and all pipelines, if any, and other connections between them. The outlines of such contiguous premises and the warehouse premises must be shown in contrasting colors.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.224 Floor plans. The plans shall include a floor plan of each floor of each building, or, where the warehouse consists of less than the entire building, each floor comprising the warehouse, showing the general dimensions of the rooms and floors, and the location of all doors, windows, and other openings, and how such openings are protected. If the construction of all floors in a single building is identical, a typical floor plan may be filed in lieu of a separate plan for each floor. All storage tanks, gauging tanks, and other tanks used in connection with the receipt, storage, gauging, withdrawal, or bottling of distilled spirits, must be shown in their exact location on the floor plans, and their designated use, serial numbers, and capacity indicated. Other equipment of a permanent nature and all areas occupied by racks intended for storage of packages shall be shown. Pipelines may also be shown, if desired.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.225 Elevational flow diagrams. Elevational flow diagrams (plans) shall be submitted covering the flow of spirits from the time of receipt on the premises,

the deposit in storage tanks or gauging tanks, and the removal therefrom. Such diagrams shall clearly depict all equipment in its relative operating sequence, and elevation by floors, with all connecting pipelines, valves, measuring devices, and attachments for Government locks. The elevation by floors on the diagrams may be indicated by horizontal lines representing floor levels. All major equipment, such as storage tanks and gauging tanks, must be identified on these plans as to number and use. The elevational flow diagram must be so drawn that all fixed pipelines, except those indicated by § 225.227, may be readily traced from beginning to end: *Provided*, That pipelines leading to and from other buildings on the same or contiguous premises may be designated as to point of origin or termination. The direction of the flow of the spirits through the pipelines must be indicated on the flow diagram by arrows. Where another business is to be conducted within the same buildings, the assistant regional commissioner may require elevational plans of such buildings.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.226 *Colors for pipelines.* Pipelines must be shown on the plans in the colors in which they are required to be painted, as follows:

Black	Distilled spirits
White	Water
Aluminum	Steam
Orange	Air
Purple	Refrigerants

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.227 *Pipelines exempted.* Approved public or private utility service lines, such as sewers, electric or gas conduits or pipes, and approved sprinkler, refrigeration, or heating systems which have no connection with equipment used for spirits, need not be shown on the plans: *Provided*, That the point of entry to the bonded premises shall be indicated on the plans.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.228 *Certificate of accuracy.* The plat and plans shall bear a certificate of accuracy in the lower right hand corner of each sheet, signed by the proprietor, the draftsman, and the assistant regional commissioner, substantially in the following form:

-----	(Name of warehouseman)
-----	(Address)
Approved -----	(Date)
-----	(Assistant Regional Commissioner)
Accuracy certified by:	
-----	(Name and capacity—for the proprietor)
-----	(Draftsman)
----- 19 -----	Sheet No. -----
IRBW No. -----	

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.229 *Revised plats and plans.* The sheets of revised plats and plans shall bear the same number as the sheets superseded, but will be given a new date. Any additional plats and plans shall be given a new number in consecutive order, or will be otherwise numbered and lettered in such manner as will permit the filing of the plats and plans in proper sequence.

(68A Stat. 643; 26 U. S. C. 5231)

SUBPART I—REQUIREMENTS GOVERNING CHANGES IN NAME, PROPRIETORSHIP, CONTROL, LOCATION, PREMISES AND EQUIPMENT, AND IN THE TITLE TO THE WAREHOUSE PROPERTY

§ 225.240 *Change in name.* Where there is a change in the individual, firm, or corporate name of the proprietor of an internal revenue bonded warehouse, he must comply with the following requirements:

(a) *Amended application, Form 27-D.* Submit to the assistant regional commissioner an amended application on Form 27-D, in triplicate, covering the new name, which application must be approved before operations may be commenced under the new name.

(b) *Amended permit.* If engaged in the business of warehousing and bottling distilled spirits, and if other than an agency of a State or political subdivision thereof, or an officer or employee of any such agency, procure from the assistant regional commissioner an amended basic permit under the Federal Alcohol Administration Act authorizing the warehousing and bottling of distilled spirits under the new name.

(c) *Amended articles of incorporation, etc.* In the case of a corporation, submit to the assistant regional commissioner certified copies, in triplicate, of the amended articles of incorporation and the amended certificate of incorporation issued under the laws of the State in which incorporated covering the change in the corporate name. If the operations are conducted in a State other than the State in which incorporated, there must also be submitted to the assistant regional commissioner certified copies, in triplicate, of the amended certificate issued under the laws of the State in which the operations are conducted, authorizing the corporation to operate under its new name in such State. If other documents than those specified are required under the laws of the State to effect a change in the name of the corporation, certified copies, in triplicate, of such documents must be submitted with the application, Form 27-D, in lieu of those specified.

(d) *Amended articles of partnership or association.* If the proprietor of the warehouse is a partnership or association, submit to the assistant regional commissioner certified copies, in triplicate, of the amended articles of copartnership or of association, if any.

(e) *Trade name certificate.* In the case of a change in the firm or trade name, submit to the assistant regional

commissioner certified copies, in triplicate, of the certificate or other document filed with or issued by State officials under the laws of the State to cover the transaction of business under such firm or trade name. If no such certificate or other document is required by the laws of the State to be filed with or issued by any State official to cover the transaction of business under a firm or trade name, the proprietor shall furnish a statement, in triplicate, to that effect.

(f) *Sign.* Change the warehouse sign to conform to the provisions of § 225.100.

(g) *Records.* Upon approval of the documents covering the change in name, note on the records for the current month the change in name.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

CHANGE IN PROPRIETORSHIP

§ 225.241 *Discontinuance.* Where there is to be a change in the proprietorship of an internal revenue bonded warehouse the outgoing proprietor must comply with the requirements outlined in §§ 225.242 to 225.245.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.242 *Application, Form 27-D.* The outgoing proprietor of an internal revenue bonded warehouse must submit to the assistant regional commissioner Form 27-D, in triplicate, stating thereon the purpose to be "Transfer of business to (Successor)," and giving the date of the proposed transfer.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.243 *Transfer of spirits.* Upon qualification of the successor, the outgoing proprietor of an internal revenue bonded warehouse must transfer the spirits in the warehouse to him pursuant to application of the successor on Form 236.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.244 *Records.* Upon transfer of the business to the successor, the outgoing proprietor of an internal revenue bonded warehouse must complete Form 52C and file with the assistant regional commissioner a final report on such form in accordance with Subpart VV of this part. A notation of the transfer of the business to the successor will be made on such final report.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.245 *Disposition of stamps.* The outgoing proprietor may not transfer any domestic or export strip stamps to his successor. The stamps must be disposed of as provided in § 225.287.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.246 *Qualification of successor.* Where there is to be a change in the proprietorship of an internal revenue bonded warehouse, the successor must comply with the requirements outlined in §§ 225.247 to 225.253.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.247 *Nonfiduciary successor.* If the change in proprietorship is brought about otherwise than by operation of law, as by the appointment of an administrator, executor, receiver, trustee, assignee, or other fiduciary, the successor must qualify in the same manner as the proprietor of a new warehouse, except that he may adopt the plat and plans of his predecessor, as provided in § 225.250.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.248 *Fiduciary.* If the successor is an administrator, executor, receiver, trustee, assignee, or other fiduciary, and intends to receive spirits, or to possess or dispose of spirits on hand in the warehouse, he must comply with the provisions of Subpart F of this part to the extent that such provisions are applicable, except that in lieu of filing new transportation and warehousing bonds, and new plat and plans, the fiduciary may furnish consents of surety extending the terms of his predecessor's bonds and adopt the plat and plans of such predecessor. The fiduciary must also furnish certified copies, in triplicate, of the order of the court, or other pertinent documents, showing his qualification as such fiduciary. The effective date of the qualifying documents filed by a fiduciary should be the same as the date of the court order, or the date specified therein for him to assume control.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.249 *Consent of surety.* The consents of surety extending the terms of the predecessor's bonds to cover operation of the warehouse by a fiduciary, must conform to the requirements of § 225.196 and be executed by both the fiduciary and the surety.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.250 *Adoption of plat and plans.* The plat and plans of the warehouse may be adopted by a successor where they correctly describe and depict the warehouse premises and the buildings, apparatus and equipment thereon, to be taken over by the successor. The adoption by a successor of the plat and plans of his predecessor shall be in the form of a certificate, in triplicate, in which shall be set forth the name of the predecessor, the address and registry number of the warehouse, a description of the warehouse premises or in lieu thereof reference to the successor's Form 27-D describing such premises, the number of each sheet comprising each plat and plan covered by such certificate, and a statement that the warehouse premises and the buildings, apparatus, and equipment thereon are clearly described and depicted on such plat and plans.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.251 *Sign.* The successor, if other than a fiduciary temporarily operating the warehouse, must change the warehouse sign to conform to the requirements of § 225.100.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.252 *Transfer application, Form 236.* The successor must submit to the assistant regional commissioner application on Form 236, in quadruplicate, for

the transfer to him of the spirits in the warehouse on the effective date of the change in proprietorship.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.253 *Commencement of operations.* The successor may not commence operations until the required qualifying documents have been approved.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.254 *Completion of bottling-in-bond operations required.* When a succession or actual change takes place in the proprietorship of an internal revenue bonded warehouse in which a bottling-in-bond department is being operated, other than a change brought about by operation of law, as by the appointment of an administrator, executor, assignee, receiver, trustee, debtor in possession in bankruptcy proceedings, or other fiduciary, the bottling of spirits must, except as provided by this section, be completely finished by the person or persons who have been carrying on the business, and all spirits removed from the bottling-in-bond department before the business shall be undertaken or begun by the succeeding proprietor. Where a change of proprietorship has been brought about by operation of law, the administrator, executor, assignee, receiver, trustee, debtor in possession in bankruptcy proceedings, or other fiduciary, may not commence or complete operations until the required qualifying documents have been filed and approved.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.255 *Completion of operations by fiduciary.* If an administrator, executor, assignee, receiver, trustee, debtor in possession in bankruptcy proceedings, or other fiduciary, succeeds to the business while spirits are in the process of bottling, and he qualifies to conduct the business as required by this part, he shall make appropriate notation of his succession on each Form 1515 and on Form 1606, and upon completion of the bottling, he shall complete the execution of Form 1515 and otherwise proceed as specified in this part. The storekeeper-gauger will make similar notation of such succession on Form 1513.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

§ 225.256 *Changes in partnership.* The withdrawal of one or more members of a partnership, or the taking in of a new partner, whether active or silent, shall constitute a change in proprietorship. Likewise, the bankruptcy or adjudicated insolvency of one or more of the partners results in a dissolution of the partnership and consequently a change in proprietorship. Where such a change in proprietorship of the warehouse occurs, the successor must qualify in the same manner as the proprietor of a new warehouse, except that the successor may adopt the plat and plans of his predecessor, in the manner prescribed by § 225.250.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.257 *Changes in stockholders, officers, and directors of corporation.* The sale or transfer of the capital stock of a corporation operating an internal

revenue bonded warehouse does not constitute a change in proprietorship of the warehouse. However, where the sale or transfer of capital stock results in a change in the control or management of the business, or where there is any change in the officers or directors, the proprietor must give notice thereof, in triplicate, to the assistant regional commissioner within 10 days of such change. Mere changes in stockholders of the corporation not constituting a change in control need not be so reported. The assistant regional commissioner must, in the case of changes in officers or directors, be furnished extracts, in triplicate, of the minutes of the meetings showing such changes and must be furnished the addresses of the new officers or directors.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.258 *Reincorporation.* Where a corporation operating an internal revenue bonded warehouse is reorganized and a new charter or certificate of incorporation is secured, the new corporation must qualify in the same manner as the proprietor of the new warehouse, except that the new corporation may adopt the plat and plans of the predecessor, in the manner prescribed by § 225.250.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.259 *Change in location.* Where there is to be a change in the location of the warehouse premises, the proprietor must comply with all applicable provisions of this part, except that in lieu of the filing of a new transportation and warehousing bond, Form 1571, the proprietor may furnish consent of surety, Form 1533, in accordance with § 225.196, extending the terms of such bond given for the former location to cover operation of the warehouse at the new location.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5242)

§ 225.260 *Changes in premises.* Where the premises are to be extended or curtailed, the proprietor must file with the assistant regional commissioner an amended application, Form 27-D, and an amended plat of the premises as extended or curtailed, except as herein specifically authorized in the case of alternate operations of the bottling department. If the plans are affected by the extension or curtailment, they must also be amended. The additional premises covered by an extension may not be used for bonded warehouse purposes, and the portion of the warehouse premises to be excluded by curtailment may not be used for other than warehouse purposes prior to approval of the application, Form 27-D, plat, and plans, if required, filed in connection therewith. Where an internal revenue bonded warehouse contains a bottling-in-bond department, and the documents required by this part governing the alternate operation of a bottling house as a bottling-in-bond department and a tax-paid bottling house, are filed, and no change in proprietorship is involved, the filing of additional applications, Form 27-D, covering changes in the temporary status thereof from time to time, will not be required. Where a warehouse

building on distillery premises, on which a lien for taxes has attached under section 5004, I. R. C., is demolished or altered, the provisions of Parts 220 and 221 of this title, relative to the filing of indemnity bonds, will be followed.

(68A Stat. 643, 645; 26 U. S. C. 5231, 5243)

§ 225.261 Changes in construction and use. Where a change is to be made in the construction of a room or building not involving an extension or curtailment of the warehouse premises, or where a change is to be made in the use of any portion of such premises, the proprietor shall first secure approval thereof by the assistant regional commissioner pursuant to application, in duplicate, setting forth specifically the proposed changes. Upon approval of the application, the changes will be made under the supervision of an internal revenue officer. The completed changes will be reflected in the next amended application, Form 27-D, and amended plans filed by the warehouseman, unless the assistant regional commissioner requires the immediate filing of an amended application and amended plans.

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.262 Changes in equipment. Where changes are to be made in the apparatus and equipment of the warehouse, the proprietor shall first secure approval thereof by the assistant regional commissioner pursuant to application in duplicate, setting forth specifically the proposed changes: *Provided*, That emergency repairs may be made under the supervision of the internal revenue officer without prior approval of the assistant regional commissioner. Where such emergency repairs are made the proprietor shall file immediately a report thereof, in duplicate, with the assistant regional commissioner. Changes covered by an approved application will also be made under the supervision of an internal revenue officer. Upon completion of any changes made under his supervision, the internal revenue officer will submit a report of the changes to the assistant regional commissioner. Where changes in equipment are made in internal revenue bonded warehouses located on distillery premises and a lien for taxes has attached to such equipment under section 5004, I. R. C., the provisions of Parts 220 and 221 of this title, relative to the filing of indemnity bonds, will be followed.

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.263 Amended application and plans covering changes in equipment. Upon completion of changes in equipment which materially affect the accuracy of the Form 27-D or plans, the proprietor must file an amended application and amended plans. Where an amended application and amended plans are not filed immediately upon completion of minor changes in equipment (such as general repairs, changes in pipelines, or the addition or removal of a tank), the proprietor must include such changes in the next amended application and plans filed by him: *Provided*, That the assistant regional commissioner may, at any time in his discretion, require the

immediate filing of an amended application and plans covering any change in equipment.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.264 Change of title. Whenever there is a change in the proprietor's title to, or interest in, the warehouse premises, or in the terms of his occupancy of such premises, he must file amended application, Form 27-D, covering such change.

(68A Stat. 643; 26 U. S. C. 5231)

SUBPART J—REQUIREMENTS GOVERNING ALTER-NATE OPERATIONS OF BOTTLING-IN-BOND DEPARTMENT AS TAXPAID BOTTLING HOUSE

§ 225.270 Basic qualifications required. The bottling-in-bond department of an internal revenue bonded warehouse may be operated alternately for bottling distilled spirits in bond, and bottling distilled spirits after removal from bond in accordance with Part 230 of this title: *Provided*, That such operation as a taxpaid bottling house is for a period of twenty-four hours, or multiples thereof, concurrent with the calendar day, or days, as the case may be, and does not involve the storage or retention of taxpaid spirits on distillery or warehouse premises. The basic qualifications for the establishment of a taxpaid bottling house shall be in accordance with Part 230 of this title, and where the bonded warehouse is located on the premises of a registered distillery or fruit distillery, it is also necessary to follow provisions of Part 220 or Part 221 of this title, respectively, relative to the filing of amended notice on Form 27-A or 27½, plat and other documents. Where it is proposed to operate an established bottling-in-bond department temporarily as a taxpaid bottling house, it will be necessary to file (a) qualifying documents curtailing the bonded premises to exclude the bottling department, (b) qualifying documents establishing the taxpaid bottling house, and (c) a blanket consent of surety, Form 1533, by the principal and surety, extending the terms of bond, Form 1571, to cover the alternate use of the bottling-in-bond department as a taxpaid bottling house. Such blanket consent may be executed in the following form:

To continue in effect the said bond, notwithstanding the exclusion of the bottling-in-bond department from time to time for use temporarily as a taxpaid bottling house, in accordance with Notice, Form 404, filed by the principal.

The basic qualifying documents having once been filed by the proprietor and approved by the assistant regional commissioner, the operating status of the bottling department, that is, for bottling in bond or temporarily for taxpaid bottling, shall be approved by the storekeeper-gauger in charge of the warehouse on Form 404, in accordance with § 225.272.

(68A Stat. 639, 645; 26 U. S. C. 5214, 5243)

§ 225.271 Approval required before resumption. When it is desired to resume operations of the bottling-in-bond department following the suspension of operations as a taxpaid bottling house,

authority therefor must be obtained from the storekeeper-gauger in charge of the warehouse on Form 404 before actual resumption of operations.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.272 Suspension procedure. Where the proprietor of an internal revenue bonded warehouse desires to suspend operations of his bottling-in-bond department in order that it may be operated temporarily as a taxpaid bottling house, he must complete the bottling of all spirits, and remove such bottled spirits from the bottling-in-bond department, and upon suspension of the bottling-in-bond department, comply with the following requirements:

(a) *Notice, Form 404.* File with the storekeeper-gauger in charge of the warehouse, Form 404, in triplicate, for authority to suspend bottling-in-bond operations and to use the premises temporarily as a taxpaid bottling house. The form shall be executed in accordance with the instructions printed thereon or issued in respect thereto, and as required by this part. Upon approval of Form 404, the storekeeper-gauger in charge will forward the original copy to the assistant regional commissioner, deliver one copy to the proprietor and retain the remaining copy for his files.

(b) *Communicating doors to be closed.* Close and lock, and keep locked, the communicating doors (if any) between the bottling-in-bond department and the storage portion of the warehouse, in accordance with § 225.72.

(c) *Locking of outside doors.* During the period the bottling house is operated as a taxpaid bottling house, the outside doors of the bottling house shall be locked at night with a Government lock: *Provided*, That such requirement may be waived in instances where the bottling house is located in a building which is separate and apart from any other building used in connection with the internal revenue bonded warehouse.

(68A Stat. 639, 645; 26 U. S. C. 5214, 5243)

§ 225.273 Resumption procedure. Where the premises have been operated temporarily as a taxpaid bottling house and the proprietor desires to resume operations thereof as a bottling-in-bond department of the internal revenue bonded warehouse, he must comply with the following requirements:

(a) *Notice, Form 404.* File with the storekeeper-gauger in charge of the warehouse, Form 404, in triplicate, for authority to suspend taxpaid bottling house operations and resume bottling-in-bond operations. The form shall be executed in accordance with the instructions printed thereon or issued in respect thereto, and as required by this part. Upon approval of Form 404, the storekeeper-gauger in charge will forward the original copy to the assistant regional commissioner, deliver one copy to the proprietor and retain the remaining copy for his files.

(b) *Completion of bottling.* Complete all bottling of spirits, and remove such spirits from the taxpaid bottling house prior to suspension of operations.

(68A Stat. 639, 645; 26 U. S. C. 5214, 5243)

SUBPART K—REQUIREMENTS GOVERNING THE BOTTLING OF DISTILLED SPIRITS UNDER A TRADE NAME

§ 225.280 *General.* The proprietor must bottle distilled spirits in bond under his real name or the trade name in which the warehouse is operated: *Provided*, That if the proprietor is also a distiller and has produced and warehoused spirits under a trade name, he may bottle spirits under such trade name upon compliance with the following requirements:

(a) *Application, Form 27-D.* Submit to the assistant regional commissioner an amended application on Form 27-D, in triplicate, reciting therein the trade name or names, which application must be approved before the spirits may be bottled under such trade name or names.

(b) *Permit.* The bottler must file an application for amendment of the Federal Alcohol Administration Act basic permit to authorize the bottling and labeling of distilled spirits under the trade name.

(c) *Notice, Form 404.* Upon approval of the application on Form 27-D, submit Form 404, in triplicate, to the assistant regional commissioner, as provided in § 225.996.

(68A Stat. 645; 26 U. S. C. 5243)

SUBPART L—DISCONTINUANCE OF BOTTLING-IN-BOND DEPARTMENT

§ 225.285 *Disposition of spirits.* Upon permanent discontinuance of a bottling-in-bond department, and prior to the filing of notice thereof on Form 27-D, as prescribed in § 225.288 and Form 404, all spirits on hand must be lawfully removed from the department.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.286 *Disposition of indicia bottles.* If there are any indicia bottles on hand, the same will be inventoried by the storekeeper-gauger or other officer designated for the purpose by the assistant regional commissioner. The disposition of such bottles will be in accordance with the procedure prescribed in Part 175 of this title.

(68A Stat. 639, 645; 26 U. S. C. 5214, 5243)

§ 225.287 *Disposition of bottled-in-bond stamps.* All unused bottled-in-bond stamps, if any, belonging to the proprietor at the time of permanent discontinuance of business will be inventoried by denomination, serial number, and quantity, and the inventory will be verified by the storekeeper-gauger or other officer designated by the assistant regional commissioner to perform such duty. Such stamps shall be disposed of in accordance with the instructions of the assistant regional commissioner. The proprietor will make appropriate notation on Form 1606 of the disposition made of the bottled-in-bond stamps, if any, on hand at the time of permanent discontinuance of business by the proprietor.

(68A Stat. 608; 26 U. S. C. 5008)

§ 225.288 *Notice, Form 27-D.* When all spirits, indicia bottles, and strip stamps have been lawfully disposed of, the proprietor shall file Form 27-D, in triplicate, with the assistant regional

commissioner, stating the purpose of the filing thereof to be "Permanent discontinuance of bottling-in-bond department." The assistant regional commissioner will forward one copy of Form 27-D to the Director, Alcohol and Tobacco Tax Division, with a copy of the report of the internal revenue officer, reflecting compliance with the provisions of this part.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.289 *Notice, Form 404.* The proprietor must submit with the Form 27-D required by § 225.288, notice on Form 404, in triplicate, stating the purpose of the filing thereof to be "Permanent discontinuance of bottling-in-bond department."

(68A Stat. 645; 26 U. S. C. 5243)

SUBPART M—DISCONTINUANCE OF WAREHOUSE

§ 225.295 *Discontinuance by Director, Alcohol and Tobacco Tax Division.* Whenever, in the opinion of the Director, Alcohol and Tobacco Tax Division, any internal revenue bonded warehouse is unsafe or unfit for use, or the spirits therein are liable to loss or great wastage, he may discontinue such warehouse and require the spirits therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe. Such transfer shall be made under the supervision of the assistant regional commissioner, or of such other officer as may be designated by the Director, Alcohol and Tobacco Tax Division, and the expense thereof shall be paid by the owner of the spirits. Whenever the owner of the spirits fails to make such transfer within the time prescribed, or pay the just and proper expense of such transfer, as ascertained and determined by the Director, Alcohol and Tobacco Tax Division, such spirits may be seized and sold by the district director in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expense of such sale and removal, and the balance paid over to the owner of the spirits.

(68A Stat. 649; 26 U. S. C. 5252)

§ 225.296 *Discontinuance by proprietor.* If the proprietor of an internal revenue bonded warehouse desires to discontinue the warehouse after all spirits deposited therein have been lawfully removed therefrom, he will file Form 27-D, in triplicate, with the assistant regional commissioner, stating therein the purpose of the form to be "Discontinuance of warehouse," and giving the date the discontinuance is to be effective. The proprietor will furnish in connection with such form a statement as to whether there are any spirits in transit to the warehouse and whether there are any outstanding approved applications, Form 236, for the transfer to the warehouse of spirits which have not yet been released from the distillery or bonded warehouse from which they were to be withdrawn, and will secure the return of all such applications to the assistant regional commissioner for cancellation.

SUBPART N—ACTION BY ASSISTANT REGIONAL COMMISSIONER

ORIGINAL ESTABLISHMENT

§ 225.300 *Examination of qualifying documents.* Upon receipt of application, plat, plans, transportation and warehousing bond, and other documents required by this part of persons desiring to establish an internal revenue bonded warehouse, the assistant regional commissioner will examine the same to determine whether they have been properly executed and whether they reflect compliance with the requirements of the law and this part. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not reflect compliance with this part, action thereon will be held in abeyance until the omission, or error or discrepancy, has been rectified, and there has been full compliance with all requirements.

§ 225.301 *Inspection of premises.* Where the required documents have been filed in proper form, the assistant regional commissioner will assign an inspector to examine the premises, buildings, apparatus, and equipment, to determine whether they conform to the description thereof in the application, plat, and plans, and whether the construction and measures of protection afforded to meet the requirements of the law and regulations in this part. The inspector will observe particularly the manner in which the buildings or rooms constituting the warehouse are separated from each other and from other premises, means of communication, ingress and egress, adequacy of protection afforded windows, doors, and other openings, construction of apparatus and equipment, and the suitability of the gauging facilities and of the Government office. Where the inspection discloses minor irregularities in the qualifying documents or in the construction, the inspector will at the time of the discovery of such irregularities direct the attention of the proprietor to the same in order that the proprietor may correct the defects before completion of the inspection. Upon completion of the inspection, a report thereof will be submitted to the assistant regional commissioner.

§ 225.302 *Examination of tanks.* The assistant regional commissioner will, in every case, require an officer to examine carefully each tank to see that it is constructed in strict compliance with this part. The officer will test the accuracy of the scales or measuring devices required to be provided for the tanks, and if it is found that the same are not strictly accurate, or if any portion of the equipment does not conform to the requirements of this part, he will not recommend approval of the tanks until the proper changes are made.

§ 225.303 *Test of scales and measuring devices.* The test of the accuracy of the scales or measuring devices of storage tanks mounted on scales and of bottling tanks and gauging tanks must be an actual one. Where tanks are mounted on scales, the accuracy of the scales shall be determined in the manner provided by § 225.114. Where tanks are not

mounted on scales the tests may be made by filling the tanks with water and drawing off several precise quantities, observing after each withdrawal that the quantity remaining is correctly indicated by the measuring devices and that the quantity withdrawn agrees with that indicated by the measuring devices. An accurate water meter, where available, may likewise be used to check the calibration of the tanks.

§ 225.304 *Approval of tanks.* When the officer who is required to examine the tanks is satisfied that the same and the attachments thereto are properly constructed, and that the scales or measuring devices are accurate, he will so report to the assistant regional commissioner, in writing, and will securely attach to each bottling tank a certificate on Form 244. No tank or attachment thereto shall be used until the same has been approved and, in the case of a bottling tank, a certificate has been attached.

§ 225.305 *Report of inspection.* The report of inspection shall describe separately all irregularities and discrepancies found during the course of inspection, and shall include a complete statement describing all unusual or special conditions. The construction of the ground or first floor of the warehouse, including the materials used, shall be described, and particularly whether the construction is such as would permit removal and replacement of portions of the floor without detection. Where irregularities are corrected during the inspection, the report will indicate the corrections so made. The report need not set out in detail each description as set forth in the application, plat and plans. The description of buildings and equipment in the report should be general and brief. However, construction, equipment, signs, etc., which are not in conformity with law and the regulations in this part will be completely described. If there are any pipelines or other connections or openings between the warehouse premises and other premises, the same shall be described in detail. There shall also be included in the report information as to whether the methods of storage to be employed are such as will permit ready inspection and examination of packages and other containers of spirits, and where the warehouse is not situated on or contiguous to distillery premises, all pertinent facts respecting suitability of location and adequacy of the capacity and transportation facilities will be set forth.

§ 225.306 *Inaccurate documents.* Where the assistant regional commissioner's examination, or the inspector's report, discloses discrepancies in the qualifying documents, the inaccurate or incomplete documents will be returned to the proprietor for correction. A record will be kept of all bonds so returned.

§ 225.307 *Defective construction.* Where it is found that the construction of the warehouse or its equipment does not conform to the requirements of the law and this part, the assistant regional commissioner will inform the proprietor concerning the defects, and further ac-

tion will be held in abeyance pending correction thereof.

§ 225.308 *Law violation record.* Before approving any application for the establishment of an internal revenue bonded warehouse, the assistant regional commissioner will make such inquiry or investigation as may be deemed necessary to ascertain whether the individual, firm, partnership, corporation, or association submitting the same, or any person owning, controlling, or actively participating in the management of the business, has been convicted in a court of competent jurisdiction of (a) any fraudulent noncompliance with any provision of any law of the United States if such provision related to internal-revenue or customs taxation of distilled spirits, wines, or beer, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association upon payment of penalties or otherwise, or (b) any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, beer, or other intoxicating liquor. Where record is found of the conviction or compromise of such offense, the assistant regional commissioner may disapprove the application upon the basis of his findings: *Provided*, That if an application is disapproved the applicant may appeal to the Director, Alcohol and Tobacco Tax Division.

(68A Stat. 643, 680; 26 U. S. C. 5231, 5551)

§ 225.309 *Other causes for disapproval.* The assistant regional commissioner will not approve any application for the establishment of an internal revenue bonded warehouse unless (a) the capacity of the warehouse is commensurate with the prospective needs of the area or locality in which it is situated and in any event not less than 5,000 barrels, including any equivalent thereof in tank or case storage capacity, or any combination of barrel, tank or case storage facilities, (b) the location is suitable, (c) the transportation facilities are adequate, (d) the design and construction of the warehouse are such as to insure economical supervision by internal revenue officers, and (e) the prospective volume of spirits that will be received, stored, withdrawn, and bottled at the warehouse is sufficient to warrant the establishment of the warehouse and the expense of Government supervision: *Provided*, That these provisions shall not be applicable where the warehouse is an original warehouse to be operated by the distiller (not including lessee distillers) on or contiguous to the distillery premises, or is a second warehouse which the distiller desires to operate on premises contiguous to or near such original warehouse on account of lack of storage space in the original warehouse and the impracticability of expanding such warehouse. In any case where the warehouse has a bottling-in-bond department and the applicant is not entitled to a permit under the Federal Alcohol Administration Act, the assistant regional commissioner will, upon disap-

proval of the permit application, return all copies of the qualifying documents to the applicant without action thereon or reference to the Director, Alcohol and Tobacco Tax Division.

(68A Stat. 643; 26 U. S. C. 5231)

§ 225.310 *Approval of qualifying documents.* The assistant regional commissioner is authorized to approve all applications (except by the United States or governmental agency thereof), bonds, consents of surety, and other qualifying documents required by this part. If the assistant regional commissioner finds, upon examination of the inspection report and the qualifying documents, that the person seeking to establish an internal revenue bonded warehouse has complied in all respects with the requirements of the law and this part, and that the application and other qualifying documents may properly be approved under §§ 225.308 and 225.309, he will assign a registry number in accordance with § 225.311, note his approval on all copies of the application, the transportation and warehousing bond, and on all copies of the plat and plans, and shall dispose of the qualifying documents and inspectors' reports in accordance with § 225.313. If the warehouse has a bottling-in-bond department, the issuance of a permit under the Federal Alcohol Administration Act should be withheld pending approval of the application, bond, and other qualifying documents required by the internal revenue laws and this part.

§ 225.311 *Registry numbers.* Internal revenue bonded warehouses will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new warehouses will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued warehouses will not be reassigned to other warehouses. In the case of a successor taking over the warehouse, the same registry number will be retained. In the case of a change in location of the warehouse within the same State, the same registry number may be retained. (68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.312 *Disapproval of qualifying documents.* If the assistant regional commissioner finds that the applicant has not complied in all respects with the requirements of the law and this part, or that the application should be disapproved pursuant to §§ 225.308 or 225.309 he will note his disapproval on the application, and will dispose of all qualifying documents in accordance with § 225.313.

§ 225.313 *Disposition of qualifying documents.* When the assistant regional commissioner approves the qualifying documents, he will forward to the applicant one copy of the documents with the original of the basic permit issued under the Federal Alcohol Administration Act, forward to the Director, Alcohol and Tobacco Tax Division, one copy of the qualifying documents (except any bond given with corporate surety) and a copy of the basic permit issued under the Federal Alcohol Admin-

istration Act, together with copies of inspection reports, and retain the originals of the qualifying documents for the file of the applicant. If the qualifying documents are disapproved, the assistant regional commissioner shall return to the applicant one copy of the disapproved application, together with all copies of the qualifying documents, and all copies of the bond without action thereon. The assistant regional commissioner shall forward one copy of the disapproved application to the Director, Alcohol and Tobacco Tax Division, and will advise him fully respecting the disapproval thereof. He shall retain the remaining papers in his file. If the applicant is not entitled to a basic permit, the assistant regional commissioner will, upon disapproval of the application therefor, return all copies of the qualifying documents to the applicant without action thereon.

§ 225.314 *Notice of penal sum of bond.* The assistant regional commissioner will inform the storekeeper-gauger in charge of each internal revenue bonded warehouse in his region of the penal sum of the approved transportation and warehousing bond. The assistant regional commissioner will advise the storekeeper-gauger currently of any change in the penal sum of such bond.

CHANGES SUBSEQUENT TO ORIGINAL ESTABLISHMENT

§ 225.315 *Procedure applicable.* The provisions of §§ 225.300 to 225.314 respecting the action required of assistant regional commissioners in connection with the original establishment of internal revenue bonded warehouses will be followed, to the extent applicable, where there is a change in the name of the proprietor, or in the proprietorship, location, premises, construction, apparatus, and equipment of the warehouse, or in the title to the warehouse property, or where consents of surety or superseding or additional bonds are submitted: *Provided*, That where the premises are extended or curtailed to provide for alternate operation of the bottling-in-bond department as a taxpaid bottling house, the procedure prescribed in §§ 225.270 to 225.272 will be followed.

§ 225.316 *Application covering changes.* Where an application covering changes in warehouse buildings or apparatus or equipment is approved by the assistant regional commissioner, he will retain one copy of the application and forward one copy to the proprietor. Similar disposition will be made of reports received from the proprietor covering emergency repairs of apparatus and equipment.

§ 225.317 *Inspection.* Upon receipt of Form 27-D for the discontinuance of an internal revenue bonded warehouse, accompanied by a statement of the proprietor showing that there are no spirits in transit to the warehouse and no outstanding approved applications, Form 236, for the transfer of spirits to the warehouse, the assistant regional com-

missioner will cause an inspection to be made of the warehouse and the storekeeper-gauger's records to determine whether all spirits deposited in the warehouse have been withdrawn and properly accounted for. Likewise, where the warehouse is to be discontinued by the Director, Alcohol and Tobacco Tax Division, as provided in § 225.295, and all spirits in transit to the warehouse have been received and all spirits deposited therein have been removed, the assistant regional commissioner will cause an inspection of the storekeeper-gauger's records to be made to determine whether all spirits deposited in the warehouse have been properly accounted for.

§ 225.318 *Removal of Government property.* When all spirits have been withdrawn from an internal revenue bonded warehouse which is to be discontinued, the assistant regional commissioner will cause the removal from the warehouse of all Government locks, keys, seals, gauging instruments, records, and other Government property. The property specified will be forwarded to the office of the assistant regional commissioner as surplus property, unless the assistant regional commissioner should deem the transfer of the property, or a part thereof, to some other plant under his jurisdiction to be advisable and proper, in which event he will direct such disposition to be made thereof. Entry Forms 1520, 1619, and 1620 covering the deposit of spirits in the warehouse will be so stored that they may be referred to when necessary.

§ 225.319 *Storekeeper-gauger's report.* Upon completion of the inspection of the warehouse and Government records and the removal of Government property, the storekeeper-gauger or other internal revenue officer charged with such duty will submit a report to the assistant regional commissioner.

§ 225.320 *Assistant regional commissioner's report.* If the assistant regional commissioner finds, upon receipt of the report from the storekeeper-gauger or other internal revenue officer, that all spirits deposited in the warehouse have been withdrawn and properly accounted for, he will note his approval on all copies of Form 27-D and forward one copy together with a copy of the internal revenue officer's report, to the Director, Alcohol and Tobacco Tax Division, and return a copy to the warehouseman. Where discontinuance of the warehouse was ordered by the Director, Alcohol and Tobacco Tax Division, the assistant regional commissioner will forward to the Director, Alcohol and Tobacco Tax Division, a complete report of the removal of the spirits from the warehouse, together with a copy of the internal revenue officer's report of the inspection of the warehouseman's and storekeeper-gauger's records and the removal of the Government property from the warehouse.

SUBPART O—TERMINATION OF BONDS

§ 225.335 *Transportation and warehousing bonds.* Transportation and

warehousing bonds, Form 1571, may be terminated as to liability (a) for spirits consigned to the internal revenue bonded warehouse after a specified future date, pursuant to notice by the surety as provided in § 225.340, (b) for transactions subsequent to the effective date of an approved superseding bond, or (c) for future transactions upon discontinuance of business by the principal after withdrawal of all spirits from the warehouse. (68A Stat. 643; 26 U. S. C. 5231)

§ 225.336 *Direct export bonds.* Bonds covering a specific lot of distilled spirits withdrawn for direct export, Form 547, will be terminated by the assistant regional commissioner by marking the bond "Canceled," followed by the date of cancellation, upon receipt of evidence of the exportation of the spirits to a foreign country or satisfactory proof of loss at sea: *Provided*, That where there is a deficiency, the bond will not be canceled by the assistant regional commissioner until liability for the deficiency has been terminated. Continuing bonds covering spirits withdrawn from time to time for direct exportation, Form 657, will be similarly terminated by the assistant regional commissioner when no further withdrawals are to be made thereunder: *Provided*, That the account kept with the bond in accordance with § 225.838 shows that there are no outstanding charges. (68A Stat. 647; 26 U. S. C. 5247)

§ 225.337 *Transportation for export bonds.* Bonds covering a specific lot of distilled spirits withdrawn for transportation for export, Form 548, will be terminated by the assistant regional commissioner by marking the bond "Canceled," followed by the date of cancellation, upon receipt of Form 206 from the collector of customs showing the clearance of the spirits: *Provided*, That where there is a loss in transit, the bond will not be canceled until the liability for the loss has been terminated. Continuing bonds for distilled spirits withdrawn from time to time for transportation for export, Form 658, will be similarly terminated by the assistant regional commissioner where no further withdrawals are to be made thereunder: *Provided*, That the account kept with the bond in accordance with § 225.838 shows that there are no outstanding charges. (68A Stat. 647; 26 U. S. C. 5247)

§ 225.338 *Bonds covering transportation to manufacturing warehouses.* Bonds covering a specific lot of distilled spirits withdrawn for transportation to a customs manufacturing bonded warehouse, Form 643, will be terminated by the assistant regional commissioner by marking the bond "Canceled," followed by the date of cancellation, upon receipt from the collector of customs of Form 3923 showing the deposit of the spirits in the customs manufacturing bonded warehouse: *Provided*, That where there is a loss in transit the bond will not be canceled until the liability for the loss has been terminated. Continuing bonds covering spirits with-

drawn from time to time for transportation to customs manufacturing bonded warehouses, Form 1618, will be similarly terminated by the assistant regional commissioner where no further withdrawals are to be made thereunder: *Provided*, That the account kept with the bond in accordance with § 225.878 shows that there are no outstanding charges.

(68A Stat. 679; 26 U. S. C. 5522)

§ 225.339 *Bonds covering withdrawals for use of United States.* Bonds covering the withdrawal of distilled spirits for the use of the United States, Form 544, may be terminated by the assistant regional commissioner upon receipt of a properly executed certificate on Form 545, showing receipt of the spirits by the Government representative to whom the same were delivered: *Provided*, That where there is a deficiency the bond will not be released until the liability for the deficiency has been terminated.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.340 *Relief of surety from bond.* A surety on any bond required by this part may at any time in writing notify the principal and the assistant regional commissioner in whose office the bond is on file that he desires, after a date named, which shall be at least 60 days after the date of notification, to be relieved of liability under said bond. The notice shall be executed in triplicate by the surety, who shall deliver one copy to the principal and the other two to the assistant regional commissioner, who will retain one copy and transmit the remaining copy to the Director, Alcohol and Tobacco Tax Division. This notice may not be given by an agent of the surety unless it is accompanied by a power of attorney duly executed by the surety authorizing him to give such notice or by a verified statement that such power of attorney is on file with the Department. The surety must also file with the assistant regional commissioner an acknowledgment or other proof of service of such notice on the principal. If the notice is not thereafter in writing withdrawn the rights of the principal as supported by said bond shall be terminated, except as hereinafter provided, on the date named in the notice, and the surety shall be relieved (a) in the case of a transportation and warehousing bond, Form 1571, from liability for spirits transferred or consigned to the internal revenue bonded warehouse wholly subsequent to the date named in the notice, or (b) in the case of direct export bonds, Forms 547 and 657, transportation for export bonds, Forms 548 and 658, bonds covering transportation to customs manufacturing bonded warehouses, Forms 643 and 1618, or bonds for the withdrawal of spirits for the use of the United States, Form 544, from liability for distilled spirits withdrawn for direct exportation, transportation for export, transportation to customs manufacturing bonded warehouse, or for the use of the United States, as the case may be, wholly subsequent to the date named in the notice. If the principal files a valid superseding bond on Form 1571, prior to the date named in the surety's notice, the surety shall also

be relieved from liability for spirits on hand or in transit to the internal revenue bonded warehouse on the effective date of the superseding bond. If the principal fails to file a superseding bond, the surety, notwithstanding his release from liability as specified in condition (a) above, shall continue to remain liable under the bond for all spirits on hand or in transit to the internal revenue bonded warehouse on said date, until such spirits have been lawfully disposed of or a new bond has been filed by the principal covering the same. Liability under bonds on Forms 544, 547, 548, 643, 657, 658, and 1618 for spirits removed thereunder prior to the date named in the surety's notice shall continue until such spirits are properly accounted for, regardless of whether the principal files a superseding bond. Where the principal fails to file such superseding bond, the assistant regional commissioner will, by letter, notify the surety of such fact and of his continued liability under the bond for spirits on hand or in transit to the internal revenue bonded warehouse on said date. The assistant regional commissioner will also at such time notify the principal that no more spirits may be transferred or consigned to the internal revenue bonded warehouse, until a valid bond is filed. The assistant regional commissioner will forward a copy of each such letter to the Director, Alcohol and Tobacco Tax Division.

§ 225.341 *Application for notice of termination.* An application must be filed, in duplicate, with the assistant regional commissioner for termination of continuing bonds (Form 657) for direct export, continuing bonds (Form 658) for transportation for export, and continuing bonds (Form 1618) for transportation to customs manufacturing bonded warehouse, for which the principal no longer has any use.

§ 225.342 *Termination of bonds.* When a superseding bond has been issued for a transportation and warehousing bond or the principal has discontinued business, the assistant regional commissioner will make a complete examination of the records to determine whether there is any liability outstanding against the bond. If it is found that spirits warehoused or transported, under the bond have not been accounted for, or that outstanding assessments or demands for payment of taxes chargeable against the bond have not been paid or otherwise settled, the assistant regional commissioner will not terminate the bond until the liability is settled. When an application for notice of the termination is filed with the assistant regional commissioner, as provided in § 225.341, or where the specific liability covered by the bond has been terminated, in the case of a direct export bond, transportation for export bond, or bond covering the transportation of spirits to a customs manufacturing bonded warehouse, or bond covering withdrawals for use of the United States, the assistant regional commissioner will examine his records to determine whether the required evidence of exportation or loss at sea, or clearance, or deposit in the manufac-

turing warehouse, or delivery to the Government representative, as the case may be, of the spirits withdrawn under the bond has been filed, and if there were deficiencies, whether liability for the deficiencies has been terminated. Where a bond was previously marked "Canceled," in accordance with §§ 225.336, 225.337, or 225.338, no further examination of records will be necessary. If the assistant regional commissioner finds that the bond may be terminated, he will issue notice of termination thereof in accordance with § 225.343.

§ 225.343 *Notice of termination.* Upon cancellation of a transportation and warehousing bond, Form 1571, as to liability for future transactions, the assistant regional commissioner will execute a notice of termination on Form 1490 where a superseding bond has been approved, or a notice of release on Form 1491 where the principal has discontinued business and removed all the spirits from the warehouse, as the case may be, in quadruplicate (in quintuplicate if there are two sureties), and will forward one copy to the Director, Alcohol and Tobacco Tax Division, one copy to each obligor on the bond, and retain the original on file with the bond to which it relates. Where, as provided in § 225.341, an application for termination of a direct export bond, transportation for export bond, or bond covering transportation to a customs manufacturing warehouse, has been filed with the assistant regional commissioner, or the specific liability covered by the bond has been terminated, and the assistant regional commissioner has found that there has been compliance with the provisions of §§ 225.336, 225.337, 225.338 or 225.339, as the case may be, he will issue Form 1491 as provided in this section.

§ 225.344 *Release of collateral.* The release of collateral pledged and deposited to support bonds required in this part will be in accordance with the provisions of Department Circular 154, revised (31 CFR Part 225), subject to the conditions governing the issuance of notices on Forms 1490 and 1491 of the termination of such bonds. When the assistant regional commissioner determines that there is no outstanding liability against the bond, he will fix the date or dates on which a part or all of the security may be released. In fixing such date, which ordinarily will be not less than six months from the date of determination that there is no outstanding liability against the bond, the assistant regional commissioner will satisfy himself that the interests of the Government will not be jeopardized. At any time prior to the release of such collateral security, the assistant regional commissioner may, in his discretion, and for proper cause, further extend the date of release of the security for such additional length of time as in his judgment may be appropriate. Collateral pledged and deposited to support a direct export bond, transportation for export bond, bond covering transportation to customs manufacturing warehouse, or bond covering withdrawals for use of the United States,

will ordinarily be released by the assistant regional commissioner upon issuance of notice of release of the bond, Form 1491.

(61 Stat. 646; 6 U. S. C. 15)

SUBPART P—CONTROL, CUSTODY, AND SUPERVISION

§ 225.350 *Control of warehouse.* Every internal revenue bonded warehouse shall be under the control of the assistant regional commissioner of the region in which the warehouse is located.

(68A Stat. 641; 26 U. S. C. 5241)

§ 225.351 *Assignment of storekeeper-gaugers.* When an internal revenue bonded warehouse is established, the assistant regional commissioner will assign one or more storekeeper-gaugers to the warehouse. In determining the number of storekeeper-gaugers to be assigned to a bonded warehouse the assistant regional commissioner will consider the number and size of the rooms or building comprising the warehouse, the number of packages of spirits to be received and removed daily, whether spirits are to be bottled in bond at such warehouse, whether a taxpaid bottling house is to be operated in connection with the warehouse, and whether the warehouse is located on, or is contiguous or adjacent to, the premises of a distillery.

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.352 *Keys to gates.* If there is a fence or wall around the warehouse, the proprietor shall furnish the assistant regional commissioner as many keys to each of the gates or doors of such fence or wall as may be required from time to time.

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.353 *Examination of warehouse.* Storekeeper-gaugers will, upon assignment to a bonded warehouse, examine the warehouse and its equipment and will determine that the doors, windows, and other openings are properly protected and equipped for locking; that the inlets, outlets, and other necessary openings of all tanks for spirits and valves in pipelines, if any, are properly equipped for locking; and that all pipeline connections conform to this part. The storekeeper-gauger will apply Government locks and seals wherever the same are required.

§ 225.354 *Custody of warehouse.* Each internal revenue bonded warehouse shall be in the charge of a storekeeper-gauger and every such warehouse shall be in the joint custody of the storekeeper-gauger and the proprietor thereof and kept securely locked, and shall at no time be unlocked or opened, or remain open, except in the presence of the storekeeper-gauger or other person who may be designated to act for him. The keys to all Government locks shall remain at all times in the custody of the storekeeper-gauger, except that where no storekeeper-gauger is regularly assigned to the warehouse such keys shall remain in the custody of the storekeeper-gauger at the distillery having charge of the warehouse, or in the custody of the assistant regional commissioner or other

person designated by him. The storekeeper-gauger having custody of the keys will not at any time permit them to go into the possession of any other person, except the assistant regional commissioner or an officer authorized by the assistant regional commissioner or the Director, Alcohol and Tobacco Tax Division, to receive them.

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.355 *Warehouse to be kept locked.* The outside doors of the warehouse shall be locked with Government locks and kept locked at all times except when spirits are being entered into or removed from the warehouse or where it is necessary for the proprietor to have access to the warehouse for the purpose of repairing cooperage or other legitimate purposes. The doors of the bottling-in-bond department shall be locked with Government locks and kept locked at all times except when spirits are being bottled or are being entered into or removed therefrom or where it is necessary for the proprietor to have access to the bottling-in-bond department for other legitimate purposes. The bottling-in-bond department must be locked at night in the usual way, unless being used as provided in § 225.356, regardless of whether spirits are stored therein. If the bottling-in-bond department is used exclusively for bottling distilled spirits in bond, the doors (if any) in the partition or wall separating the bottling-in-bond department from the storage portion of the warehouse must be kept locked on the storage side of the warehouse except while actually being used for the transfer of spirits as provided in § 225.72. All windows and shutters shall be closed and securely fastened by the proprietor when business is finished for the day. The storekeeper-gauger will open and close the Government locks on doors and on any shutters that may be equipped with Government locks. Neither the warehouse nor the bottling-in-bond department therein shall be open on Sunday or, except as provided in § 225.356, at night or at any time other than regular business hours except in cases of emergency and then only with the approval of the storekeeper-gauger or assistant regional commissioner: *Provided*, That where the distilled spirits or other property is in imminent danger of loss by fire, flood, or other casualty or where the safety of the proprietor or his employees is endangered, and it is impracticable to first obtain authorization from the storekeeper-gauger in charge or the assistant regional commissioner, city or State fire or police officials or the proprietor may remove such seals or locks for the purpose of preventing loss of property or of avoiding danger to the safety of personnel. When cap seals or locks are removed without authorization from the storekeeper-gauger in charge or the assistant regional commissioner, the proprietor shall notify the storekeeper-gauger as soon as possible. In addition, he shall prepare a report, for delivery to the assistant regional commissioner through the storekeeper-gauger in charge not later than the close of business on the following day, describing in detail the action taken and the condi-

tions which impelled such action. Such report shall be signed by the proprietor or his authorized agent and immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge and belief is true and correct."

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.356 *Operation of bottling-in-bond department after regular hours.* No operations pertaining to the dumping, reducing and bottling of spirits in the bottling-in-bond department shall be carried on during other than regular business hours, unless special permission is first obtained therefor from the assistant regional commissioner. Where it is necessary to dump, reduce and bottle spirits after such hours to meet seasonal demands or temporary emergency conditions (a condition which could not reasonably be avoided) the warehouseman will submit an application, in triplicate, to the assistant regional commissioner for permission to operate the bottling-in-bond department after regular hours, specifying the reasons therefor and the period it is desired to operate such department. Where bona fide emergencies exist and the necessary supervision can be provided by internal revenue officers without undue interference with other activities, the assistant regional commissioner may, in his discretion, approve the application and return one copy to the warehouseman. Nothing herein is to be construed as permitting the transfer of spirits from the storage portion of the warehouse to the bottling-in-bond department, either in packages or by pipeline, or removal of cases from the bottling-in-bond department after regular business hours: *Provided*, That where the bottling-in-bond department is connected with the case storage room or building and such room or building is locked with Government locks in such a manner as to prevent access to the storage portion of the warehouse through any opening other than the door between such storage portion and the bottling-in-bond department, cases may be removed to such storage room or building during the time the bottling-in-bond department is operating.

(68A Stat. 644, 645; 26 U. S. C. 5241, 5243)

§ 225.357 *Admittance of proprietor.* The proprietor shall upon request at reasonable times have admittance, in the presence of the storekeeper-gauger, to the warehouse and the spirits deposited therein, and may, in conjunction with the storekeeper-gauger, refuse admittance to any person not an internal revenue officer. The proprietor may have access to the spirits in bond at any reasonable time in the presence of the storekeeper-gauger for the purpose of repairing cooperage, or to take any necessary measures to prevent waste by leakage or for other legitimate purposes.

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.358 *Operations requiring immediate supervision.* The immediate supervision of the storekeeper-gauger is required whenever (a) spirits are entered into or withdrawn from the warehouse;

(b) spirits are transferred from one building to another; (c) spirits are bottled in bond; (d) spirits are drawn from tanks into packages or dumped from packages into gauge tanks; (e) a change of package is made for exportation, or to prevent loss by leakage, or for other authorized purposes; (f) samples of spirits are obtained; (g) spirits in distiller's original packages or in tanks are reduced in proof; (h) brandy-blending operations are being conducted; (i) otherwise required in this part; or (j) spirits in the warehouse are by reason of circumstances exposed to loss.

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.359 *Commercial gauging.* Spirits shall not be gauged except as required for official purposes.

SUBPART Q—DEPOSIT OF SPIRITS IN WAREHOUSE

DEPOSIT IN STORAGE TANKS

§ 225.370 *In warehouse on distillery premises.* Distilled spirits of 160 degrees of proof or more may be received by pipeline or in tank cars or tank trucks from a registered distillery or a fruit distillery and wine spirits may be received by pipeline or in tank cars or tank trucks from a fruit distillery for deposit in storage tanks in the internal revenue bonded warehouse located on distillery premises where produced: *Provided*, That (a) brandy of any proof may be received by pipeline from a fruit distillery and deposited in storage tanks; (b) rum of not less than 150 degrees of proof intended for denaturation may be received by pipeline from a registered distillery for deposit in storage tanks; (c) gin of any proof may be received by pipeline or in tank cars or tank trucks from a registered distillery and deposited in storage tanks; and (d) vodka of any proof may be received by pipeline or in tank cars or tank trucks from a registered distillery and deposited in metal, porcelain, glass, or paraffin-lined storage tanks.

(68A Stat. 634, 639, 645; 26 U. S. C. 5194, 5215, 5242)

§ 225.371 *In warehouse contiguous to distillery premises.* Distilled spirits of 160 degrees of proof or more may be received by pipeline or in tank cars or tank trucks from a registered distillery or a fruit distillery and wine spirits may be received by pipeline or in tank cars or tank trucks from a fruit distillery for deposit in storage tanks in an internal revenue bonded warehouse located contiguous to the distillery premises where produced: *Provided*, That (a) gin of any proof may be received by pipeline or tank cars or tank trucks from a registered distillery for deposit in storage tanks; and (b) vodka of any proof may be received by pipeline or tank cars or tank trucks from a registered distillery for deposit in metal, porcelain, glass, or paraffin-lined storage tanks.

(68A Stat. 634, 639, 645; 26 U. S. C. 5194, 5215, 5242)

§ 225.372 *In any warehouse.* Distilled spirits of 160 degrees of proof or more received in tank cars or tank trucks from a registered distillery or a fruit distillery and wine spirits received in tank cars

or tank trucks from a fruit distillery, or from storage tanks in an internal revenue bonded warehouse may be deposited in storage tanks in any internal revenue bonded warehouse: *Provided*, That (a) gin of any proof may be received in tank cars or tank trucks from a registered distillery or internal revenue bonded warehouse for deposit in storage tanks; and (b) vodka of any proof may be received in tank cars or tank trucks from a registered distillery or internal revenue bonded warehouse for deposit in metal, porcelain, glass, or paraffin-lined storage tanks.

(68A Stat. 634, 639, 645; 26 U. S. C. 5194, 5215, 5242)

§ 225.373 *Supervision of pipeline transfers.* The transfer of spirits by pipeline from the distillery receiving cisterns to storage tanks in a bonded warehouse will be under the immediate supervision of the storekeeper-gauger in charge of the distillery receiving cisterns and the storekeeper-gauger in charge of the warehouse, if one is assigned to the warehouse. The storekeeper-gauger supervising the deposit will see that the outlet and all other openings, except the inlet, are closed and locked when spirits are being deposited; that the inlet and all other openings, except the outlet, are closed and locked when spirits are being removed from such tanks; and that the valves in the pipeline are so adjusted by the proprietor as to properly control the flow of spirits. When the spirits have been deposited in the tanks in the bonded warehouse, the inlet will be immediately closed by the proprietor and locked by the storekeeper-gauger. The storekeeper-gauger will at such time note the number of the storage tank on the gauge report, Form 1520, covering the deposit of the spirits, and except where such spirits were gauged in the distillery immediately prior to transfer by pipeline, he will make an immediate gauge and prepare a gauge report on Form 1520 covering the deposit of the spirits. The openings of warehouse tanks containing spirits, and the valves in pipelines leading to and from such tanks, shall be kept closed and locked at all times, except when it is necessary to open such tanks for inspection or gauging purposes, or for transfer of the spirits. Whenever spirits are transferred into or out of warehouse tanks, the storekeeper-gauger will open and close the locks, but it shall be the duty of the proprietor to manipulate the stopcocks or valves controlling the flow of the spirits.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 225.374 *Tank car or tank truck transfers for deposit in storage tanks.* Where spirits received by tank car or tank truck are to be deposited in storage tanks in a bonded warehouse, the storekeeper-gauger will carefully examine the tank car or tank truck for evidence of loss and immediately upon transfer into the warehouse he will gauge the spirits and enter the details of gauge on the Form 1520 covering the transfer. The serial number of the storage tank and the quantity deposited therein will be entered on the form. If the spirits are deposited in more than one storage tank, a separate Form 1520 will be pre-

pared covering the deposit in each additional tank. Where the gauge discloses a loss or shortage, he will proceed as required by § 225.486. The storekeeper-gauger will see that the openings of the tanks and valves of the pipelines are controlled and adjusted as provided in § 225.373 relating to pipeline transfers.

(68A Stat. 634, 645; 26 U. S. C. 5194, 5242)

§ 225.375 *Custody of keys.* The keys to all Government locks on valves in pipelines used for conveying spirits from the distillery receiving cisterns to warehouse storage tanks shall remain at all times in the custody of the storekeeper-gauger in charge of the distillery receiving cisterns, except that if a storekeeper-gauger is exclusively assigned to the bonded warehouse, such storekeeper-gauger shall have custody of the keys to locks within the warehouse.

(68A Stat. 634, 645; 26 U. S. C. 5194, 5242)

§ 225.376 *Marking of tanks.* When spirits are deposited in warehouse storage tanks the warehouseman shall plainly and legibly mark on each tank the kind of spirits deposited therein, the date of the entry for deposit, and the proof at which the spirits were distilled ("Distilled 190 Proof or over," or "Distilled between 160 and 190 Proof," as the case may be). Such marks shall be completely erased by the warehouseman each time the tank is emptied. Where wine spirits for use in the production of wine, or rum of not less than 150 degrees of proof for denaturation, or spirits intended for exportation in tank cars, are transferred into warehouse storage tanks, the warehouseman shall plainly and legibly stencil upon such tanks the words "For Use in Wine Production," "For Denaturation," or "For Exportation," respectively, in addition to the other markings required by this part.

(68A Stat. 634, 645; 26 U. S. C. 5194, 5242)

§ 225.377 *Prohibited mingling in storage tanks.* Spirits which were produced from different materials, or by two or more distillers, or at two or more distilleries, or during different distilling seasons and years, or which differ in kind according to the standards of identity established under the Federal Alcohol Administration Act, or which are otherwise heterogeneous, may not be mingled in storage tanks.

(Sec. 205, 49 Stat. 981 as amended, 68A Stat. 616, 634; 26 U. S. C. 5082, 5194, 27 U. S. C. 205)

§ 225.378 *Limitation on deposits in same tank.* When the drawing of spirits from a warehouse gauging tank has begun, no further deposit of spirits therein will be permitted until the tank has been completely emptied. It will not be necessary to empty a warehouse storage tank before making additional deposits of spirits therein, provided the spirits so mingled meet the requirements of § 225.377. However, spirits must not be run into and drawn from the same tank simultaneously. If, in order to utilize a large storage tank, a proprietor desires to transfer the spirits remaining therein to a smaller tank, such transfer may be made upon application to the storekeeper-gauger in charge. The

transfer from one storage tank to another must be made under the immediate supervision of a storekeeper-gauger who will note the number of the storage tank on the Form 1520 covering the deposit of the spirits in the warehouse.

(68A Stat. 616, 634; 26 U. S. C. 5082, 5194)

SPIRITS RECEIVED IN CASKS OR OTHER APPROVED CONTAINERS

§ 225.379 *From distillery on same or contiguous premises.* Where spirits are received in packages for deposit from a distillery on the same or contiguous premises, the packages will be transferred from the distillery cistern room or fruit distillery, as the case may be, to the warehouse under the supervision of the storekeeper-gauger in charge of the cistern room or fruit distillery and the storekeeper-gauger in charge of the warehouse.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 225.380 *From distillery not on the same or contiguous premises or from another warehouse.* When spirits are received from a distillery not on the same or contiguous premises or from another internal revenue bonded warehouse for deposit, the storekeeper-gauger will examine and weigh each package and enter the weight on Form 1520 or Form 1619: *Provided*, That the weighing of packages will not be required (a) where spirits are transferred in bond, from any distillery or internal revenue bonded warehouse, in conveyances sealed with Government cap seals in accordance with the provisions of § 225.732 and the conveyances are received with such seals intact, or (b) where spirits are received from a distillery not on the same or contiguous premises, or from another warehouse, operated by the consignee or an affiliate or subsidiary of the consignee in the immediate vicinity so the transfer can be under observation by internal revenue officers at all times; where packages are received without weighing the storekeeper-gauger will so indicate in the appropriate column on Form 1520 or 1619. Where material discrepancies between shipping and receiving weights are found or where containers bear evidence of having sustained loss in transit the storekeeper-gauger will follow the procedure prescribed in § 225.381. The procedure prescribed in § 225.382 will be followed as to spirits received in tank cars or tank trucks.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.381 *Examination of packages.* Where packages of spirits are received bearing evidence of having sustained unusual losses in transit, or where material discrepancies are found by the comparison of shipping weight with the weight ascertained at the receiving warehouse, the storekeeper-gauger will observe the following procedure:

(a) Examine the condition of the cooperage of each such package.

(b) Make a gauge of each such package and enter in the "Receiving gauge" columns of the Form 1520 or 1619, as the case may be, the gross weight and proof of each package and in the loss column enter the difference in weight between the amount shipped and the amount re-

ceived. The storekeeper-gauger will also note on the reverse of the Forms 1520 or 1619 the condition of the cooperage and whether in his opinion the loss was occasioned by theft, accident, or other determinable cause. In the event the loss sustained from any package appears to have been the result of theft, such package will be detained and reported to the assistant regional commissioner in accordance with the procedure prescribed in § 225.486.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.382 *Examination of tank cars and tank trucks.* The storekeeper-gauger will carefully examine each tank car and tank truck of spirits upon its arrival at the warehouse for evidence of loss and will determine if the seals affixed at the shipping premises are intact. Where the tank car or tank truck bears evidence of tampering, or of unusual loss that cannot be satisfactorily explained, it will be temporarily detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. Where the tank car or tank truck bears no evidence of tampering, or of unusual loss that cannot be satisfactorily explained, the spirits may be taxpaid on the filling gauge, in accordance with §§ 225.383 and 225.680. Where the spirits are not to be so taxpaid, they will be gauged in a gauging tank, or by volumetric measurement in the tank car or tank truck and reported on Form 1520 covering the transfer. Where the spirits are less than 160 degrees of proof and are gauged in a gauging tank, they will be immediately returned to the tank car or tank truck for storage therein in the warehouse pending taxpayment or further transfer in bond in accordance with § 225.402: *Provided*, That gin and vodka of any proof and wine spirits may be transferred to warehouse storage tanks in accordance with § 225.402. Where the spirits are 160 degrees or more of proof, they may be returned to the tank car or tank truck, or transferred to warehouse storage tanks in accordance with § 225.402. Where, after gauge, the spirits are retained in or returned to the tank car or tank truck, the car or tank truck will be sealed pending taxpayment or further transfer in bond.

(68A Stat. 599, 604, 634, 647; 26 U. S. C. 5006, 5011, 5194, 5245)

§ 225.383 *Taxpayment on filling gauge.* When spirits are received in bond in a tank car or tank truck they may be taxpaid without regauge only where the spirits were reduced to a whole degree of proof when the car or truck was filled, or the fractional degree of proof was used in determining the proof gallonage drawn into the car or truck, and such fact was noted by the storekeeper-gauger on the Form 1520 covering the filling gauge.

(68A Stat. 647; 26 U. S. C. 5245)

§ 225.384 *Examination and deposit of cases.* Where spirits bottled in bond are received from another bonded warehouse for deposit, the storekeeper-gauger will carefully examine the shipment upon its arrival and, where the

cases bear evidence of having sustained losses, he will note the loss on Form 1620. In the event any of the cases in a shipment bear evidence of loss by theft, such cases will be detained and reported to the assistant regional commissioner in accordance with the procedure prescribed in § 225.486.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.385 *Disposition of deposit forms.* Where spirits are received from a distillery operated by the proprietor on the same or contiguous premises, the storekeeper-gauger in charge at the receiving warehouse will retain the copy of Form 1520 covering the deposit of the spirits. Upon the deposit of spirits received from a distillery not operated by the proprietor of the warehouse on the same or contiguous premises, or from another bonded warehouse, the storekeeper-gauger at the receiving warehouse will follow the procedure prescribed by § 225.751 for transfers between warehouses in the same region and § 225.756 for transfers between warehouses in different regions.

SUFFICIENCY OF BOND

§ 225.386 *Storekeeper-gauger to be informed.* Where spirits are received for deposit from a distillery operated by the proprietor of the warehouse on the same or contiguous premises, and the penal sum of the transportation and warehousing bond is less than the maximum of \$200,000, as shown by the record furnished by the assistant regional commissioner pursuant to § 225.314, the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of spirits deposited in the warehouse, plus the tax liability on the spirits represented by all outstanding approved Forms 236 (§§ 225.734 and 225.753) is within the limits of the penal sum of the bond. Such information shall also be furnished where brandies are blended under the provisions of section 5023, I. R. C. (when the penal sum of the bond is less than the maximum), and the storekeeper-gauger shall see that the penal sum of the bond is sufficient to cover the additional tax of 30 cents a proof gallon on all blended brandy on hand or in transit to the warehouse at any one time as well as the tax under section 5001 (a) (1), I. R. C., on all brandy on hand at any one time.

(68A Stat. 606, 643; 26 U. S. C. 5023, 5232)

RECORDS AND REPORTS

§ 225.387 *Storekeeper-gauger's copies of deposit forms.* All copies of Forms 236, 1520, 1619, and 1620, covering the deposit of spirits in internal revenue bonded warehouses, and all copies of Forms 1685 and 1520 covering the blending of brandy and the return thereof to the storage portion of the warehouse, shall be filed by the storekeeper-gauger as permanent records, in accordance with the procedure prescribed in Subpart TT of this part.

(68A Stat. 606, 634, 644; 26 U. S. C. 5023, 5194, 5241)

§ 225.388 *Forms 1513 and 1621.* The storekeeper-gauger in charge of an internal revenue bonded warehouse shall

report all spirits deposited in the warehouse, including blended brandies returned from the brandy-blending department, on his monthly bonded warehouse report, Form 1513, and shall make appropriate entries in his summary of deposits and withdrawals, Form 1621, as provided in § 225.1100.

SUBPART R—STORAGE OF DISTILLED SPIRITS IN WAREHOUSE

§ 225.400 *Kinds of containers.* Distilled spirits may be stored in an internal revenue bonded warehouse:

(a) In the distiller's original packages in which received, including, in the case of spirits intended for temporary storage pending exportation, wooden packages containing two or more metallic cans having a capacity of not less than 5 wine gallons each;

(b) In cases, where spirits are bottled in bond;

(c) In casks, barrels, or similar wooden packages, or in drums or similar metal packages, having a capacity of not less than 10 wine gallons each, filled from warehouse storage tanks or into which the contents of the distiller's original packages were transferred in accordance with §§ 225.407 to 225.417;

(d) In storage tanks (1) in any warehouse if the spirits are 160 degrees or more of proof; or (2) in a warehouse located on the premises of the distillery where the spirits were produced and such spirits are rum of not less than 150 degrees of proof received by pipeline and are intended for denaturation; or (3) in a warehouse located on the premises of a fruit distillery where the spirits were produced; or (4) in any warehouse where the spirits are gin or vodka of any proof or wine spirits: *Provided*, That tanks for the storage of vodka must be metal, porcelain, glass, or paraffin-lined; and

(e) In tank cars or tank trucks.

(68A Stat. 633, 634, 640, 645; 26 U. S. C. 5193, 5194, 5215, 5243)

METHOD OF STORAGE

§ 225.401 *Containers to be accessible.* Packages of distilled spirits deposited in an internal revenue bonded warehouse must be stored therein in such a manner that they may be readily inspected and examined by internal revenue officers. Aisles of sufficient width to permit passage for the purpose of inspecting and repairing the cooperage must be provided between rows of barrels. The barrels must not be so superimposed upon each other as to prevent inspection and repair of cooperage or to prevent or interfere with their removal from rows or tiers for gauging, repairing cooperage, etc. Cases of spirits must be so stored that they may be readily inventoried. The cases may be stored in stacks or blocks if segregated according to distillers, kinds of spirits, and sizes of bottles, and kept arranged in serial order. Aisles and passageways must be kept open and not be permitted to become blocked by packages or other articles.

(68A Stat. 633; 26 U. S. C. 5193)

§ 225.402 *Storage in tank cars or tank trucks.* Where spirits are re-

ceived in tank cars or tank trucks for storage in bond, the spirits may be transferred to warehouse storage tanks provided the spirits are 160 degrees of proof or more. If the spirits are less than 160 degrees of proof, such tank cars or tank trucks must be run within the warehouse and remain therein pending taxpayment or further transfer in bond: *Provided*, That gin and vodka of any proof and wine spirits may be transferred in bond in tank cars or tank trucks and such gin, vodka, or wine spirits may be deposited in storage tanks in any internal revenue bonded warehouse.

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

§ 225.403 *Failure to properly store spirits.* Where the proprietor so stores packages of spirits that they cannot be readily inspected, or removed with facility from rows or tiers for gauging, repairing of cooperage, or other proper purposes, or that unnecessary loss is likely to occur from superimposing packages upon each other, or from deterioration of the cooperage due to other causes or where spirits are stored in tanks and such tanks are not kept in good condition so as to preclude unnecessary loss of spirits therefrom, the storekeeper-gauger will make report thereof in writing to the assistant regional commissioner, who will require the proprietor to make the necessary correction. The proprietor must take whatever steps are necessary to avoid unnecessary loss or wastage of spirits in the warehouse.

(68A Stat. 604, 633, 634; 26 U. S. C. 5011, 5193, 5194)

§ 225.404 *Facilities for examination.* The proprietor shall furnish all assistance, lights, ladders, and other facilities necessary to enable internal revenue officers to examine warehouse premises and equipment and all containers of spirits stored therein.

(68A Stat. 643, 644; 26 U. S. C. 5231, 5241)

§ 225.405 *Facilities for gauging.* The proprietor of the warehouse must provide adequate assistance and facilities to enable the storekeeper-gauger to gauge any packages which, in the officer's opinion, have been tampered with or from which unnecessary loss has occurred.

(68A Stat. 604, 643, 644; 26 U. S. C. 5011, 5231, 5241)

§ 225.406 *Facilities for recooling.* The proprietor must provide suitable facilities for the recooling of spirits stored in the warehouse. Where a considerable amount of recooling is done, a separate room to be used exclusively for the purpose should be provided. If a separate room is not provided, the facilities to be used for recooling spirits must be arranged and the work performed in such a manner as to avoid unnecessary loss or wastage of spirits or impairing the safety of other spirits or rendering the required supervision by the storekeeper-gauger more difficult.

(68A Stat. 633, 634, 643; 26 U. S. C. 5193, 5194, 5231)

FILLING PACKAGES FROM STORAGE TANKS

§ 225.407 *Gauging.* Distilled spirits may be drawn into packages from storage tanks in accordance with this part. If the distilled spirits in the tank are found to be other than a whole degree of proof, adjustment to a whole degree must be made by the proprietor before withdrawal into packages. Each package must be gauged by the storekeeper-gauger. Before determining the original tare of packages, the storekeeper-gauger will examine them and will not permit the use of any package which contains or has on its exterior or interior any unauthorized substance which will prevent the correct ascertainment of the tare. The tare of the empty package will be determined and will be marked on the package and recorded on Form 1520. Weights shall be determined in pounds and one-half pounds.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 225.408 *Reduction in proof.* Spirits in warehouse storage tanks which were produced at 190 degrees of proof or more may be reduced in such storage tanks to not less than 111 degrees of proof prior to being drawn into packages. The spirits will be reduced by the proprietor of the bonded warehouse under the immediate supervision of the storekeeper-gauger. Spirits of less than 160 degrees of proof may not be withdrawn from storage tanks into tank cars or tank trucks for transfer in bond: *Provided*, That gin and vodka of any proof and wine spirits may be withdrawn from storage tanks into tank cars or tank trucks for transfer in bond. Wine spirits produced from the distilling material authorized under section 5215, I. R. C., may not be reduced with water.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.409 *Marking and branding packages filled from storage tanks.* The proprietor shall plainly and durably burn, cut, imprint, or stencil on the head of each package filled from a warehouse storage tank, in letters and figures not less than three-fourths inch in height (not less than one-half inch in height for one-half barrels), the name of the distiller or the person in whose name the spirits were produced, the registry number of the distillery, the city or town and State in which the distillery is located, kind of cooperage (as charred, recharred, plain, etc.), serial number of the package, kind of spirits, the date of filling, and in letters and figures not less than one-half inch in height, the proof at which distilled, the original proof gallons, the original proof and tare determined at time of filling, the date of original entry of the spirits for deposit, and the warehouse number and State in which located. This head shall be designated the Government head. The ink used in applying marks and brands shall be of suitable quality to effect durability and legibility and the heads of the packages shall be sufficiently smooth and free from defects to permit the marks and brands to be clearly and distinctly applied. No marks other than those required by this part shall be placed upon the Government head of a package. All marking

and branding shall be performed by the proprietor under the immediate supervision of the storekeeper-gauger. The State and registry number may be combined and abbreviated as "Calif-708." The kind of cooperage may be abbreviated "C" for charred, "REC" for recharred, "P" for plain, "PAR" for paraffined, "G" for glued, and "R" for reused (not recharred). In addition to these marks the letters "PS" (pre-soaked) will follow the letters indicating the kind of cooperage if the barrel has been steamed or water soaked prior to filling. Symbols may be used to designate the proof of distillation, e. g., "D190P" for "Distilled 190 proof or over," "D160-190P" for "Distilled between 160 and 190 proof" and "D160P" for "Distilled not over 160 proof," or in the case of spirits derived from fruit, "D170-190P" for "Distilled between 170 and 190 proof" and "D170P" for "Distilled not over 170 proof." The date of original entry of the spirits for deposit and the warehouse number and State in which located may be abbreviated as "Orig. Ent. 5-19-48" and "I. R. B. W.4-N. Y."

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

§ 225.410 Report of gauge, Form 1520. The storekeeper-gauger will enter the details of the gauge on Form 1520 and will note on each copy of the form the date of the original entry for deposit and the proof of distillation of the spirits. If the spirits are to be stored in the warehouse in which packaged, an original and two copies of Form 1520 will be prepared, one of which will be forwarded to the assistant regional commissioner, one to the warehouseman and the remaining copy retained for file. If the spirits are to be immediately transferred to another warehouse, an original and five copies of Form 1520 will be prepared. In case of packages filled for immediate transfer in bond the forms will be distributed as provided in § 225.750 or § 225.755.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.411 Numbering of packages. All packages filled from warehouse storage or gauging tanks shall be serially numbered, separately from packages filled at the distillery, beginning with number 1, preceded by the letter "T", as T-1, T-2, etc.

(68A Stat. 633, 634, 640; 26 U. S. C. 5193, 5194, 5215)

§ 225.412 Determining date of original entry. Where distilled spirits are deposited in a warehouse storage tank on different dates, the date of entry for deposit of the spirits first deposited in such tank shall be considered the date of entry for the deposit of the entire contents of the tank, for the purpose of determining the period of storage in bond.

CHANGE OF PACKAGES

§ 225.413 To prevent loss by leakage. When it becomes necessary, in order to prevent loss by leakage or wastage, the contents of a package of spirits stored in a bonded warehouse may be transferred to another package, but such transfer must be made under the supervision of

a storekeeper-gauger. The new package must be of the same kind of cooperage, unless the spirits are to be repackaged as provided in § 225.415, and must be given the same serial number, marks and brands (except the tare) as the original package. The storekeeper-gauger will take the tare of the new package and require it to be marked on the package before transfer of the spirits. When such change of package is made the storekeeper-gauger will note the change of package together with the tare of the new package on his copy of Form 1520 or Form 1619 covering deposit of the spirits in the warehouse.

§ 225.414 For exportation. For the purpose of exportation, the contents of an original package may be transferred to one or more such packages as the warehouseman desires to export, or the contents of two or more original packages may be consolidated into one package, while stored in bond, but such changes of packages must be made under the immediate supervision of the storekeeper-gauger and within the limitations and in accordance with the procedure prescribed in Subpart GG of this part.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.415 To change kind of cooperage. Where it is desired to transfer the spirits from one kind of cooperage to another, as, for example, from a plain or reused package to a charred new package, request for such transfer must be made to the assistant regional commissioner by the proprietor of the warehouse in which the spirits are stored and if such request is approved the transfer must be made under the immediate supervision of the storekeeper-gauger and in accordance with the procedure prescribed in § 225.417.

§ 225.416 Request to assistant regional commissioner. The request to the assistant regional commissioner for permission to change the kind of cooperage must give the serial number of the package or packages, kind of original cooperage, kind of cooperage desired to be used, name of the distiller, registered number and location (city or town, and State) of the distillery at which the spirits were produced and the reason why the change is desired. If the assistant regional commissioner approves the request, he will so notify the proprietor and will direct the transfer to be made under the immediate supervision of the storekeeper-gauger.

§ 225.417 Marking new packages. Each new package will be given the same serial number, marks, and brands (except the tare and kind of cooperage) as the original package, and will contain only spirits from one package. The storekeeper-gauger will take the tare of the new package and require it to be marked on the new package before the transfer, and upon completion of the transfer will prepare and sign a label to be affixed by the proprietor to the head of each new package in the manner prescribed in this section for the affixing of wholesale liquor dealer's stamps. The label shall be in the following form:

The spirits contained in this package, serial No. _____, were transferred to new _____ barrel under date of _____
(Kind of cooperage) _____ by authority of letter dated _____ The package from which the spirits herein were transferred was a _____ barrel.
(Kind of cooperage) _____
(Storekeeper-gauger) _____

When such a change of package is made, the storekeeper-gauger will note the tare of the new package on Form 1520 or Form 1619 covering deposit of the spirits and advise the assistant regional commissioner that the change has been made. If the new package should be transferred in bond the storekeeper-gauger will make a notation on the transfer Form 1619 showing the date of the change of package and the tare of the new package.

TRADE MARKS AND CAUTION NOTICES

§ 225.418 Must not resemble revenue stamp. No person shall affix or cause to be affixed to or upon any cask or package containing or intended to contain distilled spirits any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trademark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of or shall have the semblance or general appearance of any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits.

§ 225.419 Canceling of labels forbidden. The storekeeper-gauger must not apply, or permit the application of, a canceling plate to any caution notice, trade-mark, or similar device which may be attached to casks or packages of distilled spirits.

§ 225.420 Placing on Government head forbidden. No marks, brands, caution notices, or other devices whatsoever will be permitted on the Government head of any package, other than the stamps, labels, marks, or brands required or authorized to be affixed by Federal law or this part.

QUICK-AGING OF SPIRITS

§ 225.421 Approval of apparatus and process required. Distilled spirits may be quick-aged by heating during storage in an internal revenue bonded warehouse, provided the apparatus and process are approved by the Director, Alcohol and Tobacco Tax Division, and suitable arrangements are made for operation of the process. The proprietor of a bonded warehouse desiring to quick-age spirits therein shall file application in duplicate with the assistant regional commissioner for approval of the process, and must set forth in such application a complete description of the apparatus and process and a brief description of the building, room, or space in which the quick-aging is to be conducted. The assistant regional commissioner will forward one copy of the application to the Director, Alcohol and Tobacco Tax Division, with his recommendation. The applicant will be informed through the assistant regional commissioner of the Director's,

Alcohol and Tobacco Tax Division, action on the application.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 225.422 *Introducing heating device into package.* Where the spirits are to be quick-aged by the introduction of a steam pipe or other heating device into the package, a separate room or building to be used exclusively for the purpose should be provided. If a separate room or building is not provided, the process must be conducted in a separate, designated space in the warehouse suitable for the purpose, and the facilities must be so arranged as to not endanger the safety of other spirits or to require undue supervision by the storekeeper-gauger.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

§ 225.423 *Heating warehouse.* Where spirits are to be quick-aged by the general application of heat within the warehouse the proprietor must provide a suitable, separate room, which shall not be exposed or subjected to excessive heat, for the convenience of internal revenue officers in performing their duties in connection with the receipt and withdrawal of spirits.

(68A Stat. 633, 634; 26 U. S. C. 5193, 5194)

PERIOD OF STORAGE IN BOND

§ 225.424 *Eight years from date of original entry.* Distilled spirits may not remain in warehouse more than eight years from the date of original entry for deposit, except that distilled spirits which on July 26, 1936, were 8 years of age, or older, and which are in a bonded warehouse, may remain therein.

(68A Stat. 599; 26 U. S. C. 5006)

§ 225.425 *Calculation of storage period.* The period of 1 month is held to run from the date of any month to the day before the same date of the next month, both days inclusive. The 8 years during which spirits may remain in warehouse are held to expire at the close of business on the eighth anniversary of the day next preceding that on which the original entry for deposit was made, or if such day falls on Sunday or a legal holiday, then on the next preceding business day.

(68A Stat. 599; 26 U. S. C. 5006)

§ 225.426 *When tax is due and payable.* The tax on distilled spirits shall be due and payable before and at the time of withdrawal from the bonded warehouse and within 8 years from the date of original entry for deposit, except that such 8-year limitation shall not be applicable in the case of spirits which on July 26, 1936, were 8 years of age, or older, and which are in bonded warehouses.

(68A Stat. 599; 26 U. S. C. 5006)

§ 225.427 *Failure to give bond.* In case the proprietor of a bonded warehouse fails or refuses to give bond as required by law and provisions of this part or to renew the same, or neglects to withdraw the spirits or to transfer the same to another bonded warehouse immediately in accordance with law and this part, the spirits will be gauged and the tax thereon will be assessed and collected

and the spirits removed from the warehouse in accordance with the procedure prescribed in §§ 225.430 to 225.432.

(68A Stat. 643; 26 U. S. C. 5232)

EXPIRATION OF 8-YEAR PERIOD

§ 225.428 *Examination of records.* During June and December of each year the storekeeper-gauger shall examine Forms 1621 to determine whether the 8-year period of storage in bond on any spirits still in the warehouse will expire during the ensuing 6-month period. Where the examination of Forms 1621 shows that there are such spirits still in the warehouse, the storekeeper-gauger will ascertain the date of the original entry for deposit thereof from Form 1520 or Form 1619 if the spirits are in packages or other bulk containers, or from Form 1620 if the spirits are in cases, and shall determine the date of the expiration of the 8-year bonded period of all such spirits. The storekeeper-gauger shall make a list of all such packages or cases, showing the date of the expiration of the bonded period of storage of each. Where spirits of different dates of production in the same distilling season are mingled at the time of bottling, or brandies of different dates of production are blended under the provisions of section 5023, I. R. C., the bonded period of storage for such spirits or brandies will begin to run from the date of the original entry for deposit of the oldest spirits or brandies so mingled.

§ 225.429 *Notice to proprietor.* Upon completion of his examination of the records, the storekeeper-gauger will furnish the proprietor of the warehouse with a copy of the list of containers of spirits on which the bonded period will expire during the 6 months then beginning, and will call his attention to the necessity of withdrawing the spirits before the expiration of the bonded period. The storekeeper-gauger will also submit a copy of the list to the assistant regional commissioner. This provision is intended only to protect the interest of the Government. It shall not in any way release the warehouseman of any obligation imposed upon him by law or this part, or assumed under his bond, to withdraw spirits from bond within the time required by law. Whenever the warehouseman fails to withdraw any spirits before the expiration of the 8-year bonded period of storage, the storekeeper-gauger will gauge such spirits and will make report thereof to the assistant regional commissioner, as provided in § 225.430.

FAILURE TO REMOVE SPIRITS WITHIN 8-YEAR PERIOD

§ 225.430 *Gauge.* Where the proprietor fails to file application for the taxpayment or other authorized withdrawal of distilled spirits in packages or tanks prior to expiration of the statutory 8-year period, the storekeeper-gauger will, at the expiration of such period, gauge the spirits, prepare Form 1520, in quintuplicate, and forward four copies thereof to the assistant regional commissioner with a letter of transmittal giving the facts. Likewise, where the proprietor fails to file application on

Form 1519 for the taxpayment and withdrawal of distilled spirits in cases prior to the expiration of the statutory 8-year period, the storekeeper-gauger will, at the expiration of such period, prepare report on Form 1519, in quintuplicate, and forward four copies thereof to the assistant regional commissioner with a letter of transmittal giving the facts. The storekeeper-gauger will furnish the proprietor of the warehouse with one copy each of Form 1520 or 1519 and the letter of transmittal, and will retain one copy of the transmittal letter for his files.

(68A Stat. 599, 604; 26 U. S. C. 5006, 5011)

§ 225.431 *Assessment and collection of tax.* The assistant regional commissioner will forward all copies of Form 1520 or Form 1519 to the district director with a transmittal letter recommending that an assessment be made. The district director will enter the tax for assessment on his current distilled spirits assessment list. If the proprietor upon receipt of notice and demand fails to pay the tax within the time required by law, the district director shall proceed to collect the same by distraint. Upon collection of the tax on spirits in packages the district director will certify the taxpayment on the four copies of Form 1520, retain one copy of the form, forward three copies of the form to the proprietor, and advise the assistant regional commissioner that the tax has been paid. Upon collection of the tax on spirits in cases the district director will certify the taxpayment on the four copies of Form 1519, retain one copy of the form, forward three copies of the form to the proprietor, and advise the assistant regional commissioner that the tax has been paid.

(68A Stat. 599; 26 U. S. C. 5006)

§ 225.432 *Removal of spirits.* The proprietor shall deliver the three copies of Form 1520, or the three copies of Form 1519, to the storekeeper-gauger. The storekeeper-gauger will issue a wholesale liquor dealer stamp for each package reported on Form 1520 and enter the serial number thereof in the appropriate column of Form 1520. The packages will be duly stamped and marked, or the cases duly marked, as the case may be, and removed from the warehouse. The storekeeper-gauger will note the date of removal on the three copies of Form 1520 or Form 1519, retain one copy of the form, deliver one copy to the proprietor, and forward one copy to the assistant regional commissioner.

(68A Stat. 599; 26 U. S. C. 5006)

TRANSFER OF SPIRITS BETWEEN BUILDINGS CONSTITUTING SAME WAREHOUSE

§ 225.433 *Procedure.* Where spirits are to be transferred between buildings of the same warehouse, the warehouseman shall notify the storekeeper-gauger of such intention and the spirits shall be transferred under the supervision of the storekeeper-gauger. If it is ascertained that any container has been tampered with, a report will be made to the assistant regional commissioner in ac-

cordance with the applicable provisions of § 225.486.

(68A Stat. 604; 26 U. S. C. 5011)

INSTRUMENTS

§ 225.434 *To be removed or locked up when not in use.* All instruments, such as bung starters, thieves, hose, pails, etc., used in a bonded warehouse in gauging spirits or in effecting a change of package or in the taking of authorized samples, which are susceptible of use for removing bungs or otherwise gaining access to or removing the contents of packages, except instruments and vessels kept in the warehouse for fire prevention purposes, shall be removed from the warehouse when not in use or delivered to the storekeeper-gauger to be locked up by him in some secure place.

SUBPART 5—BLENDING OF BRANDIES

§ 225.450 *Limitations.* Fruit brandies distilled from the same kind of fruit at not more than 170 degrees proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, by the distiller thereof in any internal revenue bonded warehouse operated by him exclusively for the storage of brandy or wine spirits. The blending must improve (perfect) the brandy according to the approved commercial standard of the blended product. Any blending of brandy of standard quality with brandy of inferior quality for the purpose of stretching or increasing the volume of the standard quality brandy and which results in the manufacture of a product inferior to the standard quality brandy before blending, constitutes rectification and may not be done on internal revenue bonded warehouse premises.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.451 *Distiller.* As used in this subpart, the term "distiller" includes any one or more distillers associated as members of any farm cooperative, or any one or more distillers affiliated within the meaning of section 17 (a) (5) of the Federal Alcohol Administration Act, or any fruit distiller for whose account, recorded with the assistant regional commissioner at the time of production, the brandy to be blended was produced.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.452 *Eligibility for blending.* For the purpose of determining eligibility for blending, brandy distilled from the same kind of fruit at not more than 170 degrees proof shall be considered distilled by the distiller operating the internal revenue bonded warehouse (a) where it was actually distilled by him, (b) where it was produced by a distiller associated with him as a member of a farm cooperative, (c) where it was produced by a distiller affiliated with him, that is, one of such distillers has control of the other or the distillers are subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise, or (d) where it was produced for his account, provided such production was recorded with the assistant regional

commissioner at the time of production as required in § 225.453.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.453 *Copy of agreement to be filed with assistant regional commissioner.* When brandy to be blended is produced for the account of the distiller, the distiller at whose warehouse brandies are to be blended shall file with the assistant regional commissioner a certified copy of the agreement under which the brandy is to be produced for his account. The agreement shall set forth the name and registry number of the producing distiller, kind, the approximate amount of brandy to be produced, and the approximate time of production, and should clearly show that the producing distiller was engaged to produce brandy for the account of the blending distiller.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.454 *Action by assistant regional commissioner.* Upon receipt of the agreement the assistant regional commissioner shall examine it closely. To conform to the law brandy to be blended must actually be produced for the account of the blending distiller. If it appears that the agreement is a contract to produce brandy for the account of the blending distiller and is not merely a contract to sell production, the assistant regional commissioner shall notify the storekeeper-gauger assigned to the premises of the producing distiller of the names of the distillers involved and the kind and quantity of brandy to be produced for blending. The storekeeper-gauger will then take action in accordance with the procedure outlined in §§ 225.455 and 225.456.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.455 *Action by storekeeper-gauger.* Upon completion of the entry gauge and execution of the Distiller's Entry for Deposit, the storekeeper-gauger shall examine the packages involved and, where the distiller has affixed to a package a tag stating "Produced for the Account of (name of distiller for whom produced)" and the assistant regional commissioner has advised the storekeeper-gauger of the agreement to produce for the account of that blending distiller, he shall make a notation on the reverse side of all copies of the Form 1520 stating in effect "Produced for the Account of (name of distiller for whom produced)." If only a portion of the brandy covered by the Form 1520 was produced for the account of the fruit distiller who intends to blend brandy, the storekeeper-gauger shall show the serial numbers of the packages and aggregate proof gallons of brandy so produced. The statement shall be signed by the storekeeper-gauger. In the absence of tags on the containers denoting for whom the brandy was produced, or in the absence of a statement by the assistant regional commissioner relative to the agreement under which the brandy was produced, the storekeeper-gauger shall not assume that the brandies were produced for the account

of another and shall make no statement relative thereto.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.456 *Transfers in bond.* Where brandy produced for the account of a fruit distiller is transferred in bond, a transcript of the storekeeper-gauger's statement as required by § 225.455 shall be made on each copy of Form 1619. The transcript shall be shown on the face of the Form 1619 or on the reverse. If shown on the reverse, proper reference thereto should be made in the space to the left of "Date Received in Warehouse."

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.457 *Record to be made by assistant regional commissioner.* Upon receipt of a copy of Form 1520 showing brandy produced for the account of a blending distiller, the assistant regional commissioner shall note on the agreement, or on a suitable index card, the date of production, the serial numbers of the packages, and the aggregate proof gallons covered by the Form 1520.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.458 *Notice of commencement.* After the brandy-blending department has been duly approved by the assistant regional commissioner, the proprietor of the warehouse shall, before beginning blending operations, give notice, in triplicate, to the assistant regional commissioner through the storekeeper-gauger in charge of the warehouse, of his intention to blend brandies. Upon approval of the notice by the assistant regional commissioner, two copies shall be forwarded to the storekeeper-gauger in charge and the original copy shall be retained in his office. The storekeeper-gauger shall deliver one copy to the proprietor, and retain the other copy in the Government office.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.459 *Notice of discontinuance.* In the event the proprietor desires to discontinue blending operations, either temporarily or permanently, and to use the space and facilities of the blending department for other duly authorized warehouse purposes, he shall give notice, in triplicate, of discontinuance to the assistant regional commissioner through the storekeeper-gauger in charge of the warehouse that all brandies have been removed from the brandy-blending department and shall state the purpose or purposes for which he proposes to use the department. The storekeeper-gauger shall inspect the brandy-blending department and if all brandies have been removed therefrom, he shall certify to such fact on each copy of the notice of discontinuance and forward the three copies to the assistant regional commissioner. The assistant regional commissioner shall examine the notice and if the proposed use stated by the warehouseman is in accordance with law and the provisions of this part he shall endorse his approval on each copy of the notice. Upon approval by the assistant regional commissioner, two copies of the notice shall be forwarded to the storekeeper-gauger in charge and the original

copy shall be retained in his office. The storekeeper-gauger shall deliver one copy to the proprietor, and the other copy shall be retained by him in the Government office. The storekeeper-gauger shall then remove the locks from the doors to the brandy-blending department. Where brandy-blending tanks are to be used for other purposes, such as the storage of wine spirits to be used in the production of wine, the tanks must be temporarily marked to show such use, but the permanent marks on the tanks should not be disturbed. After notice of discontinuance has been approved, and before resuming blending operations, a new notice of commencement must be filed and approved.

(68A Stat. 606; 26 U. S. C. 5023)

APPLICATION TO BLEND

§ 225.460 *Brandies not previously blended.* When a distiller desires to blend brandies at his warehouse he shall file application on Form 1685, in triplicate, fully describing the brandies to be blended and giving all the information called for by the form. Each form shall be given a serial number beginning with "1" for the 1st day of January of each year and running consecutively thereafter to December 31st, inclusive. The application shall show, as to each kind of brandy not previously blended, the following:

- (a) The number of packages;
- (b) The serial numbers of the packages;
- (c) The kind of brandy as marked on the packages;
- (d) The date of original entry for deposit;
- (e) Original tax gallons;
- (f) Proof of distillation;
- (g) The name of the producing distiller, registry number of the distillery and State in which the distillery is located.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.461 *Brandies previously blended.* When previously blended brandies are to be dumped for blending with other brandies, the distiller shall file application on Form 1685, in triplicate, showing (in respect to such previously blended brandies) the following:

- (a) The number of packages;
- (b) The serial numbers of the packages;
- (c) The kind of brandy as marked on the packages;
- (d) Date of original entry of oldest brandy in blend;
- (e) Date of original entry of youngest brandy in blend;
- (f) Proof gallons marked on the packages;
- (g) The name of the blending distiller and registry number of the warehouse in which the blending was done and State in which the warehouse is located;

(h) Date and serial number of the Form 1685 covering each prior blend and the name of the blending distiller, registry number of the warehouse in which the blending was done and State in which the warehouse is located, as shown on each such Form 1685. Where a prior

blending was effected in a warehouse in another region, a copy of the Form 1685 covering such blending shall be submitted with the application.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.462 *Blending of different types or productions.* Where two or more types of brandy produced from the same kind of fruit (such as grape lees brandy, grape pomace brandy, grape brandy) are to be blended together, the applicant shall state the percentage of each type of brandy to be contained in the resultant blend. Where any brandy to be blended was produced at a distillery operated under a name other than the name of the blending distiller, the application shall show whether such distillery was operated by an associate or by an affiliate, or whether the brandy was produced for the account of the blending distiller. The application shall show the proposed designation of kind for the brandy after blending.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.463 *Evidence of affiliation or association.* Where brandy produced by an associate or an affiliate of the blending distiller is to be blended, the blending distiller must file with the assistant regional commissioner documentary evidence establishing such association or affiliation.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.464 *Bond coverage.* The blending distiller must state, as to the brandy produced by each distiller, whether the producer thereof has filed consent of surety on Form 1533, stipulating that his distiller's bond shall continue to be liable for the tax imposed by section 5001 (a) (1), I. R. C., on such brandy after it has been blended with other brandy. The consent of surety may be prepared to cover a specific lot or lots of brandy, or to cover all brandy produced by the distiller which is blended with other brandy.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.465 *Action by assistant regional commissioner.* All copies of Form 1685 shall be submitted to the assistant regional commissioner for his approval. Upon receipt of the application the assistant regional commissioner shall determine whether the proposed designation of kind for the blended brandy conforms to the provisions of section 21, class 4 of Regulations 5 (27 CFR 5.21 (d)) relating to the labeling and advertising of distilled spirits under the provisions of the Federal Alcohol Administration Act and shall otherwise determine that the brandies described on the form are eligible for blending pursuant to the provisions of section 5023, I. R. C. The assistant regional commissioner shall determine whether, for each distiller of brandy to be blended, there is on file a consent of surety stipulating that the distiller's bond shall continue to be liable for the tax imposed by section 5001 (a) (1), I. R. C., after brandy produced by such distiller has been blended. The assistant regional commissioner shall also determine whether documentary evidence has been submitted to

establish (a) that the brandy was produced by a distiller associated with the blending distiller as a member of a bona fide farm cooperative, or (b) that the brandy was produced by a distiller affiliated (as defined in § 225.451) with the blending distiller, or (c) that the brandy was produced by a distiller for the account of the blending distiller and such production was recorded (as required by § 225.453). Where the applicant has not established that the proposed blending will be in accordance with the provisions of this subpart, the assistant regional commissioner shall not approve the application and shall return it with a statement showing the reason therefor. If the assistant regional commissioner is doubtful whether the proposed designation of kind is correct, or if he is doubtful for other reasons that the application should be approved, the matter should be submitted to the Director, Alcohol and Tobacco Tax Division, for advice. If the application is approved all copies of the Form 1685 should be forwarded by the assistant regional commissioner to the storekeeper-gauger in charge of the internal revenue bonded warehouse.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.466 *Action by the storekeeper-gauger.* Upon receipt of the approved application, Form 1685, the storekeeper-gauger shall inspect and gauge the packages and make detailed report of such gauge on Form 1520, in triplicate. Where brandies covered by the application, Form 1685, were produced by different distillers or at different distilleries, separate report of gauge, Form 1520, shall be prepared for the product of each distiller or distillery. The storekeeper-gauger shall, in every instance, note on Forms 1520 the serial number and date of the application, Form 1685. The provisions of §§ 225.480 to 225.495 will be followed as to any packages bearing evidence of tampering or unaccountable loss of contents.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.467 *Verification of Forms 1520.* Where the quantity of a type or lot of brandy to be blended with another type or lot of brandy is limited to a maximum percentage, the storekeeper-gauger and the distiller should examine the Forms 1520 covering the regauge of the brandy which is limited to a maximum percentage to determine (before the report of the storekeeper-gauger on Form 1685 is executed) that the quantity of such brandy (calculated on a proof gallon basis) is not in excess of the maximum percentage authorized by the approved application. Where the quantity of a type or lot of brandy regauged exceeds the maximum percentage authorized for blending, the storekeeper-gauger may, at the distiller's request, delete the packages containing such quantities (in no case less than a whole package) from the application and line out the entries on the regauge report and permit the return of the packages to the storage portion of the warehouse. The deletion in the application must be verified by the distiller and initialed by him. Where compliance with the statement of maximum percentage cannot be obtained in

this manner, the blending operation should be suspended and the matter submitted to the assistant regional commissioner for advice.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.468 *Disposition of Forms 1685.* Upon completion of the report as to brandy dumped, blended, and returned to the storage portion of the warehouse, the storekeeper-gauger shall forward one copy of the form and one copy of Form 1520 to the assistant regional commissioner, deliver one copy of each form to the proprietor of the warehouse, and file one copy of each form in his office.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.469 *Audit by assistant regional commissioner.* At the time of auditing Forms 1520 and 1685 covering the blending of brandies, the assistant regional commissioner shall determine whether the quantities blended were in a proportion which would permit the designation of kind given to the resultant blend.

(68A Stat. 606; 26 U. S. C. 5023)

BLENDING, GAUGING, AND MARKING

§ 225.470 *Transfer of brandies to blending tank.* Before brandies are transferred to the brandy-blending tank, the storekeeper-gauger shall lock the outlet to the tank, and after all brandies have been transferred to the brandy-blending tank the storekeeper-gauger shall lock the inlet to the tank. The contents of the tank must be thoroughly agitated, the proof determined, and the contents of the tank gauged. The proof so determined shall be considered the proof of the brandy drawn into packages from the tank.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.471 *Disposition of empty packages.* Immediately upon being emptied, the packages from which brandies were dumped for blending shall be examined by the storekeeper-gauger for the purpose of determining that all brandies were removed therefrom; that all the marks and brands have been obliterated; and that such packages are removed from the warehouse: *Provided*, That in the event such packages are to be used as containers for the blended brandies, so many as are required to contain the blended brandies may be retained in the brandy-blending department for that purpose. Such empty packages shall be segregated from any filled packages in the brandy-blending department.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.472 *Drawing off brandies.* Brandies must be drawn from the brandy-blending tank into packages on or before the third working day following the deposit of the same therein. When brandies are to be drawn from the tank the storekeeper-gauger shall see that all valves and openings other than the necessary outlet valve are closed and locked before the brandies are drawn from the tank. The storekeeper-gauger shall open and close the locks, but it shall be the duty of the warehouseman to manipulate the stop-cocks or valves controlling the flow of the spirits. The storekeeper-gauger assigned to the brandy-blending department is required

to be present and personally supervise the drawing off of all brandy in the tank, the marking and branding of all packages filled therefrom. He shall also see that all mechanical duties connected with such operations are properly performed as provided in this part.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.473 *Gauging of blended brandy.* All brandies drawn from brandy-blending tanks shall be gauged by the storekeeper-gauger and reported on Form 1520. All information indicated by the headings of the various columns and lines and instructions printed on the form shall be furnished. The storekeeper-gauger shall, in every instance, note on Form 1520 the serial number of the application, Form 1685, under which the brandies were blended and the dates of original entry of (a) the oldest brandy and (b) the youngest brandy contained in the blend.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.474 *Numbering of packages.* All packages filled from brandy-blending tanks shall be serially numbered, separately from packages filled at the distillery or from storage tanks in the bonded warehouse, beginning with number "1," preceded by the letters "BL," as "BL-1, BL-2," etc. The symbol "BL" shall be considered a part of the serial number and must be shown as part of the serial number on all official forms or records.

(68A Stat. 606, 633, 634, 640; 26 U. S. C. 5023, 5193, 5194, 5215)

§ 225.475 *Marking of packages.* Immediately upon filling of the packages, or prior to filling, the blending distiller shall mark upon the head of the package by branding or stenciling the following information:

- The kind of brandy as shown on the Form 1685.
- The words "Blended By."
- The name of the blending distiller.
- The registered number of the warehouse, and the State in which the warehouse is located.
- The serial number of the package.
- The date of filling of the package.
- The date of original entry of the oldest brandy in the mixture.
- The date of original entry of the youngest brandy in the mixture.
- Proof of blended brandy.
- Tare of container.
- Proof gallon content.

The following is an illustration of the marking of packages:

GRAPE BRANDY

Blended by

JOHN DOE DISTILLING CO.

I. R. B. W. No. 217, Calif.

P. 127	S. N.—BL 10907
T. 101	Filled 7-29-52
P. G. 6130	Orig. Ent. O. B. 6-19-50
	Orig. Ent. Y. B. 6-19-51

[Space reserved for withdrawal marks and stamps]

Such marks and brands shall be placed upon the packages in letters and figures not less than three-fourths inch in height or one-half inch in the case of

half-barrels. The head of the package bearing these marks shall be known as the "Government head." No marks other than those required by this part shall be placed upon the Government head of such package.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.476 *Losses of blended brandy.* Where a loss of blended brandy in bond is found, under the provisions of §§ 225.480 to 225.495, to be subject to the tax imposed on distilled spirits by section 5001 (a) (1), I. R. C., the blended brandy is also subject to the tax of 30 cents a proof gallon under the provisions of section 5023, I. R. C.

(68A Stat. 604, 606; 26 U. S. C. 5011, 5023)

§ 225.477 *Withdrawal of blended brandies.* Brandies mixed or blended in accordance with the provisions of this subpart may be stored, transported, transferred in bond, withdrawn from bond taxpaid or tax-free, or be otherwise disposed of, in the same manner as such brandies not so mixed or blended. The foregoing should not be construed as meaning that such blended brandies are eligible for bottling in bond.

(68A Stat. 606; 26 U. S. C. 5023)

SUBPART T—LOSSES OF DISTILLED SPIRITS WHILE IN BOND

§ 225.480 *Taxable losses.* No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected:

(a) *Theft.* In the case of loss by theft unless the assistant regional commissioner shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them; and

(b) *Voluntary destruction.* In the case of voluntary destruction unless the warehouseman, or other person responsible for the tax, obtained the written permission of the assistant regional commissioner for such destruction in each case.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.481 *Insurance coverage.* The remission, abatement, or refund of the tax on distilled spirits lost by theft while in bond may be allowed only to the extent that the claimant is not indemnified against or recompensed for such tax.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.482 *Proof of loss.* In the case of loss by theft a warehouseman or other person responsible for the tax desiring to be relieved of the tax liability must file a claim and establish to the satisfaction of the assistant regional commissioner that the theft occurred without connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them. In any case in which spirits are lost or destroyed, the warehouseman or other person responsible for the tax shall, upon receipt of a request from the assistant regional commissioner, file a claim for relief from the tax and submit proof as to the cause of loss. In any instance where a claim is required, allowance for

tax on the loss may only be made pursuant to such claim.

(68A Stat. 599, 604; 26 U. S. C. 5006, 5011)

§ 225.483 Losses by theft. Where inspection of any package or container indicates that there may have been theft of distilled spirits therefrom, the storekeeper-gauger or other officer will follow the procedure outlined in § 225.486.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.484 Unauthorized voluntary destruction. The tax on distilled spirits voluntarily destroyed without authority may not be remitted or refunded. Where the warehouseman desires to destroy distilled spirits stored in bond and desires to be relieved of the tax liability thereon, he should make application for authority to destroy the spirits as provided in § 225.511. Where spirits are lost as a result of negligence or failure to exercise due care and diligence on the part of persons having custody of the spirits, as provided in § 225.403, and it appears that the spirits may be subject to additional unnecessary loss, the assistant regional commissioner may require taxpayment and removal of such spirits from the warehouse if there is evidence of such willful negligence on the part of the warehouseman to exercise due care and diligence as will constitute unauthorized voluntary destruction.

(68A Stat. 599, 604; 26 U. S. C. 5006, 5011)

§ 225.485 Other losses. If, upon gauge for removal, the loss of distilled spirits from any package or container is found to be in excess of what in the storekeeper-gauger's opinion is normal storage or transit loss, and there is evidence that such loss resulted from a cause or causes other than theft or unauthorized voluntary destruction, the condition of the container and the apparent cause of the loss shall be noted by the storekeeper-gauger on the gauge report. However, the container need not be detained. Where a damaged package which has sustained an unusual loss from obvious cause other than theft or unauthorized voluntary destruction is found either upon preparation for, or receipt after, transfer in bond the package will be weighed and proofed and the weight, proof, amount of loss, apparent cause and date will be noted on the Form 1619. Where a damaged package or other container which has sustained an unusual loss from obvious cause other than theft or unauthorized voluntary destruction is found upon warehouse inspection, the proprietor will prepare on Form 1698 an application for the examination and gauge of the package. A similar application will be prepared for any package which is to be recovered. The details of the gauge, the date, and the apparent cause of the loss will be entered on the form by the storekeeper-gauger and a copy of the form will be securely attached to the container. The new gross weight, date, and the serial number of the Form 1698 will be noted by the storekeeper-gauger on the deposit form. Losses from containers such as tank cars, tank trucks, steel drums, or warehouse storage tanks may be considered to be normal when such deficiency does not exceed 1 percent of the quantity entered

therein and there are no circumstances indicating tampering or abstraction. A determination regarding the nature and extent of losses from storage tanks will be made each time such tanks are emptied. A separate determination regarding losses from storage tanks will be made on the basis of a physical inventory at the close of each month and losses, if any, noted on Form 1621 in accordance with § 225.1101. Normal losses from wood containers will vary depending upon the type and condition of the cooperage and method and period of storage in each particular case.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.486 Report of losses. Losses of distilled spirits in bond, other than those which may be attributed to normal storage or transit losses or to obvious defects in the cooperage must be reported to the assistant regional commissioner by the warehouseman immediately after the losses are discovered. Where such loss occurs or is ascertained while the storekeeper-gauger is on duty, the warehouseman will report the loss by making an application on Form 1698 for the examination and gauge of the package, and if in the storekeeper-gauger's opinion the loss resulted from theft or unauthorized voluntary destruction, the storekeeper-gauger will immediately make a full report of the loss to the assistant regional commissioner in sufficient detail to bring out all known facts and circumstances relating to such loss. The details of the gauge, the date, and the apparent cause of the loss will be entered on the form by the storekeeper-gauger and a copy of the form will be securely attached to the container. The new gross weight, date, and the serial number of the Form 1698 will be noted by the storekeeper-gauger on the deposit form. The storekeeper-gauger will also place a detainer on the package or container: *Provided*, That where the loss is discovered at the time of a gauge for removal, the warehouseman may elect to admit, on Form 1698, the taxable status of the loss, in which event it is not necessary to file a claim or withhold release of the package if the loss is taxpaid before removal.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.487 Investigation by assistant regional commissioner. The assistant regional commissioner will consider the nature and extent of any loss reported by the warehouseman or internal revenue officer and will immediately make such investigation and require such evidence to be submitted as he may deem necessary. If, in the opinion of the assistant regional commissioner, the loss resulted from theft or unauthorized voluntary destruction, he will advise the warehouseman by letter (a) the identity of the container; (b) the amount of the loss; (c) the circumstances indicating loss by theft or unauthorized voluntary destruction; (d) that filing of proof of loss and claim for remission of the tax is required; and (e) that action will be withheld for a period not exceeding 30 days to afford the warehouseman opportunity for examination of the container and to submit such statements as may be deemed necessary.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.488 Filing of claims. Claims for the remission of tax on spirits will be filed promptly with the assistant regional commissioner of the region in which is located the bonded warehouse at which the loss occurred, or in case of loss in transit, the bonded warehouse to which the spirits were transferred. When loss of spirits in bond under other circumstances occurs, claim should be filed with the assistant regional commissioner of the region where the bond covering exportation or removal for other purpose is filed.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.489 Form of claims. Claims for remission of tax on losses of distilled spirits in bond shall be made on letter-size paper, (original only) showing the name, address, and capacity of the claimant and setting forth the following information:

(a) The name of the distiller who produced the spirits, and the registered number and location of the distillery;

(b) The serial numbers of the packages, cases, or tanks from which the spirits were lost. In the case of tank cars or tank trucks, the car or truck numbers will be stated;

(c) The quantity of spirits lost from each package or other container, and the total quantity of spirits covered by the claim;

(d) The total amount of tax for which the claim is filed;

(e) The date of the loss, or, if such date is not known, the date on which the loss was discovered and the cause and nature thereof, together with all the facts surrounding the loss;

(f) The name of the carrier, if any;

(g) If lost by theft, the facts establishing whether the loss occurred as the result of any negligence, connivance, collusion, or fraud on the part of the distiller, owner, warehouseman, consignor, consignee, bailee, or carrier, or the employees of any of them;

(h) If lost by theft, whether the claimant is indemnified or recompensed for the loss, and, if so, the amount and nature of such indemnity or recompense. The actual value of the spirits, less the tax, must be stated explicitly and, where required, certified copies of all policies of insurance or other documents of indemnity covering the spirits must be furnished. Such claims shall be signed by the proprietor or his authorized agent and immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this claim has been examined by me and to the best of my knowledge and belief is a true and correct claim."

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.490 Supporting documents. Claims for remission of tax on spirits lost while being transferred by carrier shall be supported whenever possible, by a copy of the bill of lading and statements of the agents of the carrier having personal knowledge of the loss. Claims covering losses in the bonded warehouse, or while in bond under other circumstances must be supported by affidavits

of persons having personal knowledge of the loss.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.491 *Action on claim by assistant regional commissioner.* When a claim for remission of tax is received by the assistant regional commissioner, he will carefully examine the same to see that all required information has been furnished and will cause such investigation to be made or require such additional evidence to be submitted as he may deem necessary. If the assistant regional commissioner finds that a loss of distilled spirits from a container resulted from unauthorized voluntary destruction, or from theft and the warehouseman or other person responsible for the tax fails to establish that the loss did not occur as a result of connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them, he may require the taxpayer and withdrawal of the distilled spirits upon the original quantity entered into the warehouse in such container, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into the warehouse in such container has not expired. Upon receipt of notification that a claim has been rejected, and that the distilled spirits must be taxpaid, the warehouseman should file an application on Form 179, or Form 1519 if the distilled spirits are in cases, for the withdrawal of the distilled spirits upon payment of tax. If an application for the taxpayer and withdrawal of the distilled spirits is not made by the warehouseman, an assessment will be made in accordance with prescribed procedure. At the time of referring the assessment to the district director, the assistant regional commissioner will furnish him four copies of Form 1520 (or Form 1519, as the case may be) covering gauge of the spirits. Upon payment of the tax, the procedure prescribed in §§ 225.431 and 225.432 will be followed in respect to the issuance of wholesale liquor dealer's stamps (in the case of packages) and removal of the spirits from the warehouse.

(68A Stat. 599, 604; 26 U. S. C. 5006, 5011)

§ 225.492 *Failure to file claim.* Where distilled spirits in bond are reported to have been lost and claim for remission of tax is required in accordance with § 225.487 and the required claim is not filed, an assessment will be made in accordance with prescribed procedure.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.493 *Remission of tax.* If the entire contents of a container are lost and a claim for remission of the tax is allowed, the assistant regional commissioner will take credit therefor in accordance with prescribed procedure. If the tax is remitted on a portion of the contents of a container still in bond, or if the assistant regional commissioner determines that no claim is required, he will so advise the storekeeper-gauger who will remove the detainer from the package and note on the deposit records the date of letter of advice from the assistant regional commissioner.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.494 *Records.* The proprietor shall furnish the storekeeper-gauger with sufficient file cases for the filing and retention of Forms 1698. The storekeeper-gauger will file all such reports by serial number. The assistant regional commissioner will maintain a control account for losses in warehouses and in transit thereto on Form 1691.

(68A Stat. 604, 644; 26 U. S. C. 5011, 5241)

§ 225.495 *Credit upon withdrawal.* At the time of withdrawal of packages and tank cars upon which a claim for remission of tax on losses ascertained prior to September 1, 1950, has been allowed, the proprietor will note in an unused space on Form 1520 the amount of the loss and the date and symbols appearing on the letter in which the loss was allowed. Where cases of distilled spirits are withdrawn this information will be noted on the Form 1519 covering the withdrawal.

§ 225.496 *Prior losses.* Any claim for remission or refund of the tax on any loss of spirits established prior to January 1, 1955, shall be subject to the provisions of the law and regulations as they existed at the time such loss was established.

§ 225.497 *Losses after taxpayer.* Nothing in section 5011 of the Internal Revenue Code, or in this part, shall be construed to authorize refund of the tax where the loss occurred after the tax was paid.

(68A Stat. 604; 26 U. S. C. 5011)

SUBPART U—VOLUNTARY DESTRUCTION OF SPIRITS

§ 225.510 *General.* Distilled spirits stored in an internal revenue bonded warehouse may be voluntarily destroyed without payment of tax by the warehouseman in accordance with this subpart.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.511 *Application.* Whenever the warehouseman desires to destroy distilled spirits he will file an application with the assistant regional commissioner on Form 1577, in triplicate, for such authorization. The application will be submitted through the storekeeper-gauger assigned to the warehouse: *Provided*, That, if no storekeeper-gauger is assigned to the warehouse, the application will be submitted directly to the assistant regional commissioner.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.512 *Action on application.* On receipt of Form 1577 the storekeeper-gauger will inspect the distilled spirits to verify statements of the warehouseman and where the distilled spirits are accurately described in the application execute his certificate of inspection on Form 1577 and forward all copies to the assistant regional commissioner. If the application is found to be in order the assistant regional commissioner will execute his order to the storekeeper-gauger directing him to gauge the distilled spirits and supervise the destruction thereof.

(68A Stat. 604; 26 U. S. C. 5011)

§ 225.513 *Gauge and destruction.* Spirits authorized to be destroyed will be gauged by the storekeeper-gauger and reported for that purpose on Form 1520, in triplicate. Following such gauge the spirits may be destroyed under the immediate supervision of the storekeeper-gauger by running the same into a sewer or by other suitable means to preclude their recovery. The storekeeper-gauger will execute his report on Form 1577 and will attach to each copy of Form 1577 a copy of Form 1520, return one copy of each form to the warehouseman, retain one copy of each for his file, and forward one copy of each to the assistant regional commissioner. The applicable provisions of §§ 225.480 to 225.495 will be followed in connection with any package bearing evidence of loss by theft or otherwise.

(68A Stat. 604; 26 U. S. C. 5011)

SUBPART V—TRANSFER OF SPIRITS TO BOTTLING-IN-BOND DEPARTMENT

§ 225.520 *Notice of commencement.* Form 404. Where a bottling-in-bond department has been approved, the proprietor of the warehouse will, before engaging in the business of bottling spirits, give notice to the assistant regional commissioner through the storekeeper-gauger in charge of the warehouse on Form 404, in triplicate, of his intention to bottle distilled spirits in bond. All information indicated by the lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, shall be furnished. Notices on Form 404 must be signed and verified in accordance with the instructions printed on the form. Upon approval of Form 404 by the assistant regional commissioner, two copies will be forwarded to the storekeeper-gauger in charge, and the original copy will be retained in his office. The storekeeper-gauger will deliver one copy to the proprietor, and the other copy will be retained by him in the Government office.

§ 225.521 *Restrictions.* No operations pertaining to (a) transferring of spirits from the storage portion of the warehouse to the bottling-in-bond department, (b) gauging and dumping of spirits for bottling, (c) bottling, or (d) removal or shipping from the bottling-in-bond department shall be carried on during other than regular business hours in which the internal revenue bonded warehouse is operated, except as provided in § 225.356.

§ 225.522 *Procedure.* The transfer of distilled spirits to the bottling-in-bond department and the bottling thereof shall be pursuant to application made to the storekeeper-gauger in charge of the warehouse on Form 1515, in quadruplicate, and in accordance with the procedure prescribed in subparts MM and QQ of this part.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.523 *Mingling in gauging tank of spirits intended for bottling in bond.* Only spirits which are eligible for mingling for bottling in bond under the provisions of § 225.961 may be mingled in a warehouse gauging tank for convenience

in transfer to the bottling-in-bond department.

(68A Stat. 645; 26 U. S. C. 5243)

SUBPART W—WITHDRAWALS OF SAMPLES OF DISTILLED SPIRITS

SAMPLES OF BRANDY OR WINE SPIRITS

§ 225.530 *General.* The proprietor of an internal revenue bonded warehouse may withdraw from containers in the warehouse suitable samples of brandy or wine spirits, which samples shall be tax-free if for analysis or testing and taxpaid if for any other use.

(68A Stat. 667; 26 U. S. C. 5373)

TAX-FREE SAMPLES OF BRANDY OR WINE SPIRITS FOR ANALYSIS OR TESTING

§ 225.531 *Number and size.* Samples of brandy or wine spirits for analysis or testing (including organoleptic examination) must be taken from packages designated as sample packages or from storage tanks, tank cars or tank trucks, received in bond, or from tanks in the bottling-in-bond department. Except upon authority of the assistant regional commissioner, not more than one sample may be removed from any sample package or from the same lot of brandy or wine spirits in a tank (including a tank car and a tank truck) in a period of six months. The number of packages that may be designated as sample packages shall be limited, as to each kind of brandy or wine spirits and each type of cooperage (as designated by the mandatory marks and brands on the packages), to not more than one in each twenty-five packages of any such lot of brandy or wine spirits of the same entry gauge on storage in the warehouse: *Provided*, That where less than 25 packages of any such lot of brandy or wine spirits are on storage, one package in the lot may be designated as a sample package. Samples for organoleptic examination only may not exceed one-half pint. Samples for analysis or testing may not exceed one pint. Such samples may be withdrawn upon approval by the storekeeper-gauger in charge at the warehouse of a written application filed in accordance with the provisions of §§ 225.536 and 225.537. In any instance where a one-pint sample is found to be an insufficient quantity for analysis or testing, the storekeeper-gauger, upon receipt of a statement showing the necessity for an additional quantity, may authorize the withdrawal of an additional sample, not to exceed one pint, from any designated sample package or tank. The withdrawal in excess of these limitations of tax-free samples of brandy or wine spirits shall not be permitted, unless it is shown that such samples are insufficient for the purpose intended, and the assistant regional commissioner authorizes the withdrawal of additional samples.

(68A Stat. 667; 26 U. S. C. 5373)

§ 225.532 *Disposition of samples.* Tax-free samples must be used solely for analysis or testing. Such samples may not be furnished to salesmen and dealers for advertising or soliciting purposes. Remnants or residues of tax-free samples taken from the warehouse, remain-

ing after analysis or testing and which are not desired to be retained as laboratory specimens or for further analysis or testing, should be returned to vessels in the distilling system containing similar spirits where the warehouse is on or contiguous to the distillery premises, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are not returned to the distilling system, they should be destroyed.

(68A Stat. 667; 26 U. S. C. 5373)

TAXPAID SAMPLES OF BRANDY OR WINE SPIRITS FOR OTHER THAN ANALYSIS OR TESTING

§ 225.533 *Number, size, and use.* Samples of brandy or wine spirits for other than analysis or testing, subject to payment of tax thereon, must be taken from packages designated as sample packages. Such samples must be used strictly for sample purposes, and the number and size of the samples must be restricted to that necessary for bona fide sample purposes. The number of packages from which such samples are taken must be restricted to the minimum necessary to accomplish the desired purpose. As a rule, it should not be necessary to take samples from more than one or two packages of a given lot of brandy or wine spirits of the same distillation, kind of cooperage, etc. When the warehouseman desires to procure samples from a given lot of brandy or wine spirits in warehouse, he will limit the number of packages from which it is desired to take samples to the minimum necessary to procure representative samples of such spirits. Thereafter, if it is desired to procure additional samples from the same lot of spirits, the samples should be taken from the same packages.

SAMPLES OF DISTILLED SPIRITS OTHER THAN BRANDY OR WINE SPIRITS

§ 225.534 *Limitation on number, size, and use of samples of distilled spirits other than brandy or wine spirits.* Samples of distilled spirits other than brandy or wine spirits may be taken only for organoleptic examination or analytical purposes from packages designated as sample packages and from storage tanks, tank cars or tank trucks, received in bond, or from tanks in the bottling-in-bond department. Except upon authority of the assistant regional commissioner, not more than one sample may be removed from any sample package or from the same lot of spirits in a tank (including a tank car and a tank truck) in a period of 6 months. The number of packages that may be designated as sample packages shall be limited, as to each kind of spirits and each type of cooperage (as designated by the mandatory marks and brands on the packages), to not more than one in each 25 packages of any lot of spirits of the same day's production on storage in the warehouse: *Provided*, That where less than 25 packages of any such lot of spirits are on storage, one package in the lot may be designated as a sample package. Samples for organoleptic examination may not exceed one-half pint. Samples for

laboratory analysis may not exceed one pint. Such samples may be withdrawn upon approval by the storekeeper-gauger in charge at the warehouse of a written application filed in accordance with the provisions of § 225.536. In any instance where a one-pint sample is found to be an insufficient quantity for laboratory analysis, the storekeeper-gauger, upon receipt of a statement showing the necessity for an additional quantity, may authorize the withdrawal of an additional sample, not to exceed one pint, from any designated sample package or tank. When the warehouseman desires samples in excess of these limitations and shows the need therefor, the storekeeper-gauger may authorize the withdrawal of additional samples subject to payment of tax in accordance with the provisions of § 225.544. The size and number of taxpaid samples must be restricted to the minimum necessary for the purposes for which intended.

§ 225.535 *Disposition of samples.* Samples of distilled spirits other than brandy or wine spirits must be used solely for chemical analysis or organoleptic examination. They may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where spirits are sold subject to approval as to quality, a sample taken pursuant to the provisions of §§ 225.534, 225.536 and 225.538 may be furnished the purchaser. Remnants or residues of samples not subject to taxpayment remaining after analysis or examination and which are not desired for retention as laboratory specimens or for further analysis or examination, should be returned to vessels in the distilling system containing similar spirits where the warehouse is on or contiguous to the distillery premises, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are not returned to the distilling system, they should be destroyed.

GENERAL PROVISIONS

§ 225.536 *Application for samples for organoleptic examination or analysis or testing and taxpaid samples.* When the warehouseman desires to procure one-half pint samples for organoleptic examination, or not more than two one-pint samples for analysis or testing, or taxpaid samples, he shall make application, in triplicate, to the storekeeper-gauger in charge at the warehouse. The application shall be given a serial number, beginning with "1" for the first application and running consecutively thereafter. The application shall show (a) the kind of spirits, (b) the name of the distiller, (c) the registered number of the distillery and the State in which located, (d) the serial numbers of the packages or tanks (other suitable identification for tank cars and tank trucks) from which the samples are to be removed, (e) the dates of entry for deposit, (f) the type of cooperage, (g) if the samples are to be removed from sample packages, the dates the packages were received in the warehouse, (h) whether, in the case of brandy or wine spirits, the samples are desired for organoleptic examination or analysis or testing tax free,

or for other purposes subject to payment of tax, (i) whether, in the case of spirits other than brandy or wine spirits, the samples are required for organoleptic examination or for analysis, (j) the reasons why the samples are desired, and (k) the size of each sample to be taken. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.537 *Application for additional samples of tax-free brandy or wine spirits for analysis or testing.* Where the warehouseman has found two one-pint samples to have been an insufficient quantity for analysis, and desires an additional sample or samples he shall make application in triplicate, through the storekeeper-gauger in charge at the warehouse, to the assistant regional commissioner. The application shall be given a serial number within the series prescribed in § 225.536 and show the information called for in items (a) through (h), (j) and (k) of that section. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.538 *Approval of application by the storekeeper-gauger in charge at the warehouse.* Upon receipt of an application for the withdrawal of samples in quantities not to exceed one-half pint for organoleptic examination or not more than two one-pint samples for analysis or testing or for the withdrawal of taxpaid samples from any package or tank (including tank car or tank truck) the storekeeper-gauger shall determine from his records whether, in the case of packages, the designated packages are eligible for sampling or, in the case of spirits in storage tanks, the lot of spirits contained in a tank is eligible for sampling. If he shall find the number and quantities of samples to be taken do not exceed the number and quantities permitted under §§ 225.531, 225.533, or 225.534, as the case may be, he may authorize the withdrawal of the samples. The storekeeper-gauger should assure himself of the propriety of the request. If he finds upon examination of his records that the number or quantities desired are in excess of the number or quantities permitted, he shall write upon each copy of the application a statement disclosing the reasons why the samples may not be removed. The storekeeper-gauger, upon approval or disapproval of the application, shall return one copy to the warehouseman, forward one copy to the assistant regional commissioner, and retain the original copy in his office. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.539 *Approval of application by the assistant regional commissioner for additional samples of tax-free brandy or wine spirits for analysis or testing.* Upon receipt of an application to the assistant regional commissioner for an additional sample or samples of tax-free brandy or wine spirits for analysis or testing, the storekeeper-gauger shall note upon each copy of the application the number and quantities of samples which have been removed from each package and from each lot represented, and shall forward the application with his recommendation to the assistant regional commissioner. The assistant regional commissioner

shall determine from the facts presented whether the additional sample is necessary for the proposed type of analysis or testing and shall thereupon approve or disapprove the application. He shall retain a copy in his office and return the original and one copy to the storekeeper-gauger at the warehouse, who shall file the original and return the copy to the applicant. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.540 *Removal under supervision.* All samples must be taken under the immediate supervision of the storekeeper-gauger. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.541 *Label.* At the time of the withdrawal of a sample the proprietor shall prepare a label and a copy thereof. The label and copy shall be prepared on paper having approximate dimensions of 3" x 5". The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the following information:

- The word "Sample;"
- The serial number of the approved application covering the withdrawal of the spirits;
- The kind of spirits;
- The serial number of the container from which removed;
- The name of the distiller, followed by the registered number of the distillery and the name of the State in which located;
- The purpose for which the sample is intended; and, if for analysis or testing, the name and address of the laboratory or person making the analysis (unless the analysis is to be made by the warehouseman at the warehouse premises, or premises contiguous thereto);
- The size of the sample and, in regard to wine spirits and brandy, the quantity in proof gallons extended to the 4th decimal place (the proof gallon content need not be shown on samples of other spirits);
- The name of the warehouseman, followed by the registered number of the warehouse and the name of the State in which located. Upon completion, the label and the copy shall be presented to the storekeeper-gauger, who shall verify the accuracy of the data thereon, date and sign both copies, and supervise the affixing of the label to the sample container. Where the label is to be placed upon a sample taken subject to payment of tax the storekeeper-gauger shall write upon the label and the copy the words "subject to taxpayment." The copy of the label shall be filed by the storekeeper-gauger in accordance with the provisions of § 225.542. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.542 *Office record.* The proprietor shall furnish sufficient file cases for the filing and retention of sample records. The copies of the labels shall be kept by the storekeeper-gauger as a record of samples removed and shall be filed numerically by package or tank serial number under the name and number of the producing distiller. The record shall be maintained as an active file for each sample package and for each

tank from which samples are withdrawn, during the period such packages or spirits contained in such tanks are on storage in the warehouse. At the time of preparing Form 1520 or Form 1619 covering the removal of a sample package, or upon the emptying of a tank or removal of a tank car or tank truck from which samples had been taken, the copies of labels covering samples removed from such package or tank, tank car, or tank truck shall be removed from the active file to an inactive file for storage. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.543 *Marking Form 1520 or 1619.* When the first sample is taken from any package the storekeeper-gauger will note the letters "S. P.," indicating sample package, in red on the entry Form 1520 or the transfer Form 1619 opposite the serial number of the package. (68A Stat. 667; 26 U. S. C. 5373)

§ 225.544 *Report of taxable samples.* Each day taxable samples are withdrawn the storekeeper-gauger shall enter on Form 1615, in quadruplicate, a record of the taxable samples removed. All information called for by the form shall be furnished. At the end of each month the storekeeper-gauger shall complete the report, retain one copy of the form and deliver the remaining three copies to the warehouseman, who shall forward the three copies to the district director with remittance for the tax due. The district director shall execute his certificate of taxpayment on each copy of the form, retain one copy, and return the remaining two copies to the warehouseman, who will retain one copy and deliver the other copy to the storekeeper-gauger. The storekeeper-gauger shall note the taxpayment on his retained copy and forward the other copy to the assistant regional commissioner.

SAMPLES FOR INTERNAL REVENUE SERVICE

§ 225.545 *Record.* Where samples of distilled spirits are taken periodically from packages in internal revenue bonded warehouses for research purposes by the Internal Revenue Service, the storekeeper-gauger will enter the date and quantity withdrawn on the Form 1520 or Form 1619 covering the deposit of such packages in the warehouse. If the packages are to be taxpaid under the provisions of § 225.491, credit will be allowed for the total quantity of all samples taken from any package for such purposes subsequent to the last official gauge.

SUBPART X—TAX ON DISTILLED SPIRITS

§ 225.555 *Rate of tax.* The law imposes a tax on distilled spirits produced in, or imported into, the United States, at the rate prescribed therein, on each proof gallon, or wine gallon when below 100 degrees of proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid when withdrawn from bond. (68A Stat. 595; 26 U. S. C. 5001)

§ 225.556 *Attachment of tax.* Under the law the tax attaches to distilled spirits as soon as such substance comes into existence as such, whether it be sub-

sequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(68A Stat. 595; 26 U. S. C. 5001)

SUBPART Y—WITHDRAWAL OF DISTILLED SPIRITS FROM WAREHOUSE

§ 225.560 *Kinds of withdrawal.* Distilled spirits deposited in an internal revenue bonded warehouse may, as provided in this section, be withdrawn: (a) Upon taxpayment; (b) for exportation; (c) for use as supplies on vessels and aircraft; (d) for transfer in bond to another internal revenue bonded warehouse; (e) for transfer in bond to a customs manufacturing bonded warehouse; (f) for transfer to a distillery for redistillation; (g) for use of the United States; (h) for denaturation (rum of not less than 150 degrees of proof only); (i) for use in wine production (wine spirits only); or (j) for transfer to any university, college of learning, or institution of scientific research for experimental or research use (brandy or wine spirits only).

(68A Stat. 634, 640, 645, 647, 661, 667, 679, 900; 26 U. S. C. 5194, 5215, 5243, 5244, 5246, 5247, 5331, 5373, 5522, 7510)

§ 225.561 *Kinds of containers.* Distilled spirits may be withdrawn from internal revenue bonded warehouses (a) in the distiller's original packages; (b) in packages to which the contents of original distiller's packages were transferred; (c) in cases, where bottled in bond; (d) in packages having a capacity of not less than 10 gallons each, filled from warehouse tanks; (e) in tank cars or tank trucks filled prior to deposit in the warehouse or filled from the warehouse storage tanks; (f) by pipeline (1) from storage or gauging tanks to a denaturing bonded warehouse (only rum of not less than 150 degrees of proof and provided both warehouses are located on the distillery premises); (2) from storage or gauging tanks in a warehouse to a contiguous bonded wine cellar (wine spirits); (3) from storage or gauging tanks to a distillery for redistillation; (4) from gauging tanks to a contiguous taxpaid bottling house or rectifying plant (only taxpaid spirits of any proof); or (5) from gauging tanks to a contiguous customs bonded manufacturing warehouse; or (g) in the case of taxpaid distilled spirits only, by tank car or tank truck to any premises authorized to receive distilled spirits in bulk. Distilled spirits may be withdrawn in tank cars only if the premises of the consignor and consignee are equipped with suitable railroad siding facilities. Where distilled spirits are to be warehoused in tank cars the siding facilities must extend into the receiving warehouse.

(68A Stat. 633, 634, 640, 645, 647, 661, 667; 26 U. S. C. 5193, 5194, 5215, 5243, 5244, 5247, 5331, 5373)

§ 225.562 *Preparation of withdrawal reports by proprietor.* When distilled spirits are to be withdrawn from an internal revenue bonded warehouse for any of the purposes listed in § 225.560

the warehouseman shall prepare the required withdrawal report on Form 1520, 1619, or 1620, as the case may be, in accordance with the instructions in this part, except as provided in § 225.563. The storekeeper-gauger shall verify such forms.

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.563 *Preparation of withdrawal reports by storekeeper-gauger.* When spirits are to be withdrawn from a storage tank in an internal revenue bonded warehouse in packages filled therefrom at the time of withdrawal, by pipeline or in tank cars or tank trucks, the storekeeper-gauger will prepare and complete the Form 1520 in accordance with the instructions in this part.

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.564 *Date of receipt in warehouse to be shown on withdrawal applications or permit.* At the time of submitting to the storekeeper-gauger an application prepared pursuant to the provisions of §§ 225.460, 225.485, 225.486, 225.511, 225.536, 225.600, 225.670, 225.680, 225.700, 225.783, 225.805, 225.817, 225.822, 225.862, 225.876, 225.911, 225.916, 225.919, 225.931, and 225.951, for the gauge, regauge, or withdrawal of distilled spirits, the proprietor of the internal revenue bonded warehouse shall show on the form, in addition to the other information required by the form or by the provisions of this part, the date the spirits were received in the warehouse. When the warehouseman desires to make shipment of distilled spirits in bond and furnishes the storekeeper-gauger a copy of the Form 236 covering such transfer he shall show on the form the date the distilled spirits were received in the warehouse. When the warehouseman submits permit on Form 1508, covering the withdrawal of distilled spirits for the use of the United States, he shall show on the form the date the spirits were received in the warehouse.

(46 Stat. 690, as amended, 68A Stat. 634, 644, 645, 647, 661, 667, 679; 19 U. S. C. 309, 26 U. S. C. 5194, 5241, 5243, 5244, 5247, 5331, 5373, 5522)

§ 225.565 *Withdrawal on original gauge.* Distilled spirits may be withdrawn from an internal revenue bonded warehouse on the original gauge. Packages filled from storage tanks may be withdrawn on such gauge.

(68A Stat. 647; 26 U. S. C. 5245)

MARKING, BRANDING, AND STAMPING PACKAGES

§ 225.566 *Warehouseman to mark and brand packages.* The prescribed marks and brands peculiar to individual packages, whether the same are required to be cut, burned, imprinted, or stenciled, shall be placed upon the package by the warehouseman, under the supervision of the storekeeper-gauger.

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.567 *Rebranding spirits—grain, spirits—cane, spirits—fruit.* Spirits—grain, spirits—cane, spirits—fruit, etc., which were produced at 190 degrees of proof or more and which were entered into a warehouse prior to September 1, 1950, may, prior to withdrawal for tax-

payment, be rebranded by the warehouseman "Neutral spirits—grain," "Neutral spirits—cane," etc. The new designation must, in any event, be shown on Form 1520.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.568 *Quick-aging.* Where whisky is quick-aged, by any process, in packages at any time prior to taxpayment, the letters "Q. A." will be burned, cut or stenciled upon the head of the package when such quick-aging is completed.

(68A Stat. 693, 694; 26 U. S. C. 5193, 5194)

§ 225.569 *Mechanical labor.* All mechanical labor pertaining to the gauging of distilled spirits at an internal revenue bonded warehouse shall be performed by the warehouseman.

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.570 *Use of scales.* The officer will carefully examine the scale to ascertain that the same is in good condition. He shall balance the scales before weighing either empty or filled packages, and will frequently test, by means of test weights provided in accordance with § 225.113, the accuracy of such scales. Where a weighing beam is used the officer will see that during the process of weighing the beam is horizontal, is properly adjusted, and that it balances perfectly with the barrel hooks and counterpoise attached. In case a scale becomes inaccurate for any reason, the storekeeper-gauger will not permit it to be used while it is in such condition.

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.571 *Weighing packages.* During the process of weighing, the storekeeper-gauger shall personally verify the weight of each package and enter the same in the proper column of the applicable gauge report. Care will be taken at all times to note the correct reading of the scale to the half pound and in case of doubt as to which graduation shall be read, the package will be allowed to preponderate; that is, the graduation denoting the lesser weight, will be read.

(68A Stat. 639; 26 U. S. C. 5212)

§ 225.572 *Proofing of spirits.* The storekeeper-gauger shall personally take the proof of all spirits gauged, and enter the same on the applicable gauge report. The storekeeper-gauger will follow strictly the instructions set forth in the Gauging Manual (Part 186 of this title) respecting the proofing of spirits, in order that the proof may be accurately determined. Hydrometers for determining the proof of distilled spirits are supplied by the Government for use of storekeeper-gaugers. The use of other than official hydrometers by storekeeper-gaugers is prohibited.

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.573 *Verification of marks and brands.* The storekeeper-gauger shall verify the marks and brands required to be placed on packages at the time of withdrawal, by comparison with the gauge sheet, and shall satisfy himself as to the accuracy and correctness of the marks and brands, and stamps (if any).

(68A Stat. 639, 649; 26 U. S. C. 5212, 5250)

§ 225.574 *Affixing and canceling stamps.* When packages of spirits, including blended brandy, are removed taxpaid or for exportation, the wholesale liquor dealer's stamp, or export stamp, will be affixed and cancelled by the warehouseman, under the supervision of the storekeeper-gauger, in the manner prescribed by § 225.609, prior to removal of any such packages from the warehouse. Certificates of taxpayment covering spirits gauged in bulk in a gauging tank for removal in approved containers will be cancelled and disposed of in the manner prescribed by § 225.636 and 225.637.

(68A Stat. 595, 603, 647, 649; 26 U. S. C. 5001, 5009, 5247, 5250)

§ 225.575 *Stamps, marks, and brands not to be obscured.* The stamps, marks, and brands required by law and the provisions of this part to be placed upon casks and packages of distilled spirits are designed to evidence the legal status of the spirits contained therein, and they must not be obscured in any manner or covered by encasing the package bearing the same in another, but must at all times be in such condition as to admit of ready examination by internal revenue officers.

(68A Stat. 649; 26 U. S. C. 5250)

DRAWING-OFF SPIRITS FROM GAUGING OR STORAGE TANKS

§ 225.576 *Supervision.* The storekeeper-gauger is required to supervise the drawing-off of all spirits from warehouse tanks into approved containers. The spirits will be carefully gauged by the storekeeper-gauger and the details entered on report of gauge as hereinafter provided. The outlet of the storage or gauging tank will be immediately closed by the proprietor and locked by the storekeeper-gauger when the desired quantity of spirits has been drawn therefrom. It will be the duty of the storekeeper-gauger to determine that all operations involved in the drawing-off of spirits from gauging or storage tanks, including the dumping of packages into the gauging tank for bulk gauging are properly performed.

(68A Stat. 599, 633, 634; 26 U. S. C. 5006, 5193, 5194)

§ 225.577 *Adjusting proof.* The proof of distilled spirits in warehouse gauging tanks and storage tanks shall be adjusted to a whole degree of proof prior to filling packages such as barrels or drums: *Provided*, That such adjustment will not be required prior to filling such packages from gauging tanks when the proof of the spirits is less than 100 degrees. Adjusting the proof to tenths of a degree, either above or below the whole degree, will not be permitted. Where spirits are to be transferred by pipeline from gauging tanks to tanks in the bottling-in-bond department or are to be removed from gauging or storage tanks in tank cars, tank trucks, or by pipeline, the proof of the spirits may be adjusted to a whole or complete degree prior to gauge for transfer or removal or the spirits may be transferred or removed without such reduction. Where the proof of spirits removed in tank cars, tank trucks,

or by pipeline, for taxpayment, is not adjusted to a whole degree of proof, the fractional degree of proof, if any, shall be determined to the nearest tenth, which shall be used in determining the taxable gallons in accordance with this part and Table 4 of the Gauging Manual (Part 186 of this title). Where the proof of spirits removed in tank cars, tank trucks, or by pipeline, for purposes other than taxpayment, is not adjusted to a whole degree, the proof shall be determined to the nearest tenth but shall be rounded to a whole degree in accordance with § 186.20 of this title (Gauging Manual) and such whole degree shall be the proof of removal: *Provided*, That, where the proprietor or the consignee so desires, the fractional proof may be stated as the proof of the spirits and used in determining the proof gallonage of the spirits, in lieu of the whole degree of proof. Where spirits are to be transferred in bond to an internal revenue bonded warehouse in a tank car or tank truck and the consignee desires to taxpay the spirits in the tank car or tank truck without regauge, the spirits shall be reduced to a whole or flat degree of proof before being drawn into the tank car or tank truck, or the proof gallonage shall be determined by use of the fractional degree of proof. In any such case the storekeeper-gauger shall make notation on Form 1520 that the spirits were reduced to a whole degree of proof or, if they were not so adjusted, the fractional degree of proof at which withdrawn.

(68A Stat. 639; 26 U. S. C. 5212)

§ 225.578 *Use of tank scales.* When spirits are to be gauged in a gauging tank, either for deposit in or removal from the warehouse, the storekeeper-gauger will balance the scales on which the gauging tank is mounted before the spirits are run into such tank for gauging. The storekeeper-gauger will not permit the use of any scales not tested as required by § 225.114 or which upon testing are found to be inaccurate.

(68A Stat. 634, 639; 26 U. S. C. 5194, 5212)

§ 225.579 *Gauging tanks.* When spirits are to be removed by pipeline they will be run into a properly equipped gauging tank, except that where no gauging tank is provided in the internal revenue bonded warehouse, (a) rum of 150 degrees of proof or more may be transferred by pipeline from storage tanks direct to a gauging tank in a denaturing bonded warehouse (only if both warehouses are located on the distillery premises); or (b) spirits for redistillation may be transferred by pipeline from storage tanks direct to a gauging tank in a distillery on the same or contiguous premises. Wine spirits, to be removed by pipeline, in lieu of being gauged in a gauging tank may be gauged by volume in the storage tank and removed or they may be transferred from storage tanks direct to a tank in the adjacent bonded wine cellar and gauged.

(68A Stat. 634, 639; 26 U. S. C. 5194, 5212)

§ 225.580 *Pipeline removals.* Pipelines used for the transfer of spirits to qualified establishments on the same or

contiguous premises, or to tank cars or tank trucks for shipment, must conform to the requirements of § 225.124, except that the spirits may be transferred into or from a tank car or tank truck by means of a hose connection where the same is in full view of the internal revenue officer throughout its entire length. The valves on such pipelines shall be kept closed and locked at all times, except when necessary to be open for the transfer of spirits. The keys to all locks on the valves of such pipelines shall remain at all times in the custody of the storekeeper-gauger. Spirits may be transferred by pipeline only under immediate supervision of the storekeeper-gauger.

(68A Stat. 599, 634, 636; 26 U. S. C. 5006, 5194, 5195)

TIME OF REMOVAL OF SPIRITS

§ 225.581 *Immediate removal upon taxpayment.* When distilled spirits have been gauged or regauged for taxpayment, the same must be promptly taxpaid and removed from the warehouse. Likewise, where spirits are gauged or regauged for withdrawal for other purposes, they must be promptly removed from the warehouse upon approval of the withdrawal papers.

§ 225.582 *Restrictions on removal at night.* No person shall remove any distilled spirits from any internal revenue bonded warehouse at any other time than after sunrise and before sunset in any cask or package containing more than 10 gallons.

(68A Stat. 636; 26 U. S. C. 5195)

ADDITION OF BURNT SUGAR OR CARMEL, OR OAK CHIPS, TO PACKAGES

§ 225.583 *Addition of oak chips.* Where distilled spirits are found to be unmerchantable owing to a deficiency in color, oak chips which have not been treated with any chemical may, under the conditions and limitations prescribed in the regulations governing the production of the distilled spirits, be added to the packages after the spirits have been regauged for taxpayment and prior to the affixing of the wholesale liquor dealer's stamps. Such packages shall, in addition to all other marks and brands required by this part, be branded with the words "Treated with oak chips."

§ 225.584 *Addition of burnt sugar or caramel.* Where brandy is found to be unmerchantable owing to a deficiency in color, a small quantity of burnt sugar or caramel may, under the conditions and limitations prescribed in the regulations governing the production of brandy, be added to the packages after the brandy has been regauged for taxpayment and prior to the affixing of the wholesale liquor dealer's stamps. Burnt sugar or caramel may not be so added to any spirits other than brandy. Such packages, in addition to all other marks and brands required by this part, shall be branded with the letters "B. S. A."

(68A Stat. 607, 639; 26 U. S. C. 5025, 5212)

DESTRUCTION OF STAMPS, MARKS, AND BRANDS

§ 225.585 *Upon emptying container.* When approved containers of distilled

spirits are emptied all stamps, marks, and brands required to be placed thereon must be completely effaced and obliterated, except the portions of stamps and certificates of taxpayment required to be submitted to the assistant regional commissioner. Labels affixed to tank cars or tank trucks of spirits shipped in bond must be destroyed when such cars are emptied. Certificates of taxpayment or wholesale liquor dealer's stamps affixed to tank cars and tank trucks of taxpaid spirits, must, when the tank cars or trucks are emptied, be scalped and the scalped portion of the certificate or stamp forwarded by the consignee to the assistant regional commissioner, as provided in this part. The remainder of such certificates or stamps will be destroyed. Certificates of taxpayment covering transfers by pipelines to contiguous establishments will be forwarded to the assistant regional commissioner by the consignor storekeeper-gauger in accordance with provisions of § 225.637.

(68A Stat. 603; 26 U. S. C. 5010)

RECORDS AND REPORTS

§ 225.586 *Proprietor's record and report, Form 52C.* The proprietor of every internal revenue bonded warehouse shall enter all spirits removed from the warehouse on Form 52C, as provided in Subpart VV of this part.

(68A Stat. 637; 26 U. S. C. 5197)

§ 225.587 *Storekeeper-gauger's records.* The storekeeper-gauger at an internal revenue bonded warehouse shall enter the date of withdrawal of all packages or other containers, and cases, of spirits removed from the warehouse in an appropriate column of Form 1520, Form 1619, or Form 1620, as the case may be, covering the deposit of the spirits, as provided in Subpart TT of this part. The storekeeper-gauger shall also report the withdrawal of all spirits from the warehouse in his monthly report, Form 1513, and in his summary of deposits and withdrawals, Form 1621, as provided in Subparts TT and UU of this part. The storekeeper-gauger shall also enter on Form 1621 the details of the withdrawal of brandy for blending and the return of the blended brandy to the warehouse.

(68A Stat. 606, 644; 26 U. S. C. 5023, 5241)

§ 225.588 *Filing of withdrawal papers.* All copies of the withdrawal papers, Forms 179, 206, 236, 257, 573, 1515, 1519, 1520, 1619, and 1620, and of the permit Form 1508, retained by the storekeeper-gauger upon the withdrawal of distilled spirits from the warehouse and the copy of Form 1685 retained by him upon completion of brandy-blending operations shall be filed by him in the manner prescribed in §§ 225.1101 to 225.1106.

(68A Stat. 606; 26 U. S. C. 5023)

DETERMINATION OF TARE

§ 225.589 *Method of determination.* When packages of spirits are to be individually gauged for withdrawal from the warehouse, the actual tare of the package will be determined; *Provided*, That the average increase in tare may be determined and used to establish the tare at the time of gauge for withdrawal

where it is shown to the satisfaction of the assistant regional commissioner (a) that, due to shortage of critical materials, the proprietor has been unable to install bulk gauging tanks for gauging distilled spirits dumped from packages, as provided in subpart AA of this part, (b) that the volume of taxpaid withdrawals is not sufficient to justify the installation and use of bulk gauging tanks, or (c) that, in the case of small lots, it is not feasible to dump the spirits into bulk gauging tanks of large capacities. Written application to use the average tare method of gauging distilled spirits for taxpayment will be made to the assistant regional commissioner by the warehouseman.

§ 225.590 *Actual tare method.* The actual tare of a package to be withdrawn will be determined by weighing the package after the contents thereof have been temporarily removed to a separate container and, in the event the proprietor has elected to rinse the package, after the rinse water has been drained from the package. The storekeeper-gauger will supervise all operations incident to the determination of actual tare, examine each package to see that it is thoroughly drained (of spirits or rinse water) before determining its tare, and see that the spirits are returned to the proper package. The proprietor will furnish all labor necessary for the determination of actual tare.

§ 225.591 *Average tare method.* This method of determining tare may be used only for lots of spirits of the same kind and cooperage warehoused within a period of ten days of each other at proofs not differing more than 10 percent. Packages which have been changed in cooperage to prevent loss or to change the kind of cooperage may not be included as a part of a lot containing packages not so changed, even though all packages involved contain the same kind of spirits originally warehoused within the same ten days at proofs not differing more than 10 percent. The average increase in tare for a lot of spirits will be established by finding the actual tare, as described in § 225.590, for not less than 20 percent of the packages to be gauged for withdrawal, and determining the actual increase in tare for such packages. Where the average tare method is used, however, no rinsing of packages will be permitted. The words "Average tare taken" will be entered conspicuously on Form 1520 by the proprietor and the number of packages to be used as a basis for the determination will be stated thereon as 20 percent, 25 percent, 33 1/3 percent, or 50 percent, of those to be withdrawn. The packages to be used for the determination will be selected at random by the storekeeper-gauger. Where application of the percentage to the number of packages to be withdrawn results in a fraction, the fraction will be counted as an additional package. Not less than two packages may be weighed to determine the average increase in tare of any lot of five packages or less. The actual tare found will be entered by the storekeeper-gauger on Form 1520 for those packages

for which it was determined, and an asterisk (*) will be placed to the left of the serial number of such packages. The actual increase in tare of each such package will be noted in the proper column of Form 1520 by the storekeeper-gauger, who will add these increases together and divide by the number of packages weighed to determine the average increase in tare to be applied to the other packages of the lot to be withdrawn. If the average increase so found contains a fraction of a pound less than twenty-five hundredths (0.25), it will be dropped; if twenty-five hundredths (0.25) or any intermediate fraction to and including seventy-five hundredths (0.75), it will be called one-half pound; if above seventy-five hundredths (0.75), it will be called 1 pound. The average increase in tare thus ascertained will be regarded as the increase of each of the remaining packages enumerated in the application for withdrawal and will be added to the entry tare of each such package to determine the withdrawal tare.

§ 225.592 *Limitations for reused packages.* When determining the increase in tare on reused packages selected for the purpose of ascertaining the average, if it is found that the increase in tare varies more than six pounds as between any two packages weighed, average increase in tare will not be allowed on the packages to be regauged, and actual tare must be taken on all such packages.

SUBPART Z—TAXPAID WITHDRAWALS IN PACKAGES

§ 225.600 *Application, Form 179.* Application for taxpayment and withdrawal of distilled spirits in packages from a bonded warehouse shall be made by the proprietor on Form 179, in triplicate. Unless the packages are to be withdrawn on the original gauge, the proprietor will indicate on the form the method of gauge desired, i. e., whether actual or average tare, or whether all packages of the lot will be dumped in a gauging tank for bulk gauge and subsequent removal by pipeline or in packages under the provisions of §§ 225.630 to 225.647. If the proprietor elects an individual gauge of each package, he shall also indicate on the Form 179 whether he desires the packages to be rinsed before the spirits are gauged or whether he desires to taxpay without rinsing. If the packages are not rinsed before gauging, recovery of spirits by rinsing of the packages at the time of dumping for bottling or rectification will be precluded. The proprietor's elections as to method of gauge and whether the packages will be rinsed may not be changed once gauging of the spirits has begun. Where the spirits are to be drawn into packages from a storage tank, the proprietor shall state, in addition to other applicable data on the form, the estimated quantity to be withdrawn. Separate applications shall be filed for the withdrawal of spirits from storage tanks. Likewise a separate application shall be filed for each lot of spirits in packages dumped for bulk gauge in a gauging tank in accordance with § 225.630. All copies of the appli-

cation will be delivered to the storekeeper-gauger at the warehouse.

(68A Stat. 599, 647; 26 U. S. C. 5006, 5244)

§ 225.601 *Preparation of Form 1520.* Except where spirits are to be withdrawn in packages filled from warehouse storage tanks at the time of withdrawal, the proprietor will prepare Form 1520, in quadruplicate, covering the packages shown in the application, Form 179. The proprietor will enter in the heading of the Form 1520 all the information called for and will show as to each package the necessary details of the entry gauge in the columns headed "Serial Nos. of Packages or Tank Cars," "Kind of Spirits," "Original Taxable Gallons," "Last Gauge," "Date of Original Entry for Deposit" and, if the packages are to be gauged by the average tare method, "Tare on Entry Gauge." If the "Last Gauge" was established by a Form 1698, the serial number of the form will be entered in columns 11 and 12. All copies of the Form 1520 will be delivered to the storekeeper-gauger with the Form 179.

(68A Stat. 647; 26 U. S. C. 5244)

§ 225.602 *Gauge.* If the spirits to be withdrawn are in packages, the storekeeper-gauger will examine them and where it is determined that any package bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such package will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. Packages which do not bear evidence of unusual loss, or of tampering, will then be gauged, unless they are to be withdrawn on the original gauge. The storekeeper-gauger will enter on Form 1520 the details of gauge determined by him for each package: *Provided*, That if the proprietor has elected to rinse the packages and to add any or all of the rinse water to the spirits, the gross weight, tare and proof will be determined after the packages, including char or wood chips, have been rinsed and the rinse water thoroughly mixed with the spirits. As each package is dumped the loose char and wood chips, if any, shall be collected and after rinsing shall either be returned to the package or destroyed as provided in § 225.962. Water of any temperature may be used to rinse the packages. The temperature of the water must be marked on each package in accordance with § 225.610. Where the proprietor does not wish to add any or all of the rinse water to the spirits such rinse water must be poured on the ground or into a sewer in the presence of the storekeeper-gauger. The storekeeper-gauger will in all cases note on the Form 1520 "Rinsed" or "Not Rinsed," as the case may be, and enter the remainder of the information required by the form prior to taxpayment. The storekeeper-gauger will execute his report on all copies of Form 179 and deliver them with three copies of Form 1520 to the proprietor. If the spirits to be taxpaid are in storage tanks and it is intended to taxpay the packages immediately upon the filling gauge, the spirits will, upon receipt of Form 179, be drawn into the designated packages and gauged, marked, and branded in ac-

cordance with § 225.409 and serially numbered in accordance with § 225.411. The storekeeper-gauger will prepare Form 1520, in quadruplicate, and enter thereon the details of the gauge and proof of distillation. Three copies of Form 1520, accompanied by all copies of Form 179 with the storekeeper-gauger's report thereon duly executed will be delivered by the storekeeper-gauger to the proprietor of the warehouse, who will enter the details of the gauge in the space provided therefor on Form 179.

(68A Stat. 634, 647, 649; 26 U. S. C. 5194, 5244, 5245, 5250)

§ 225.603 *Taxpayment of rinsings.* In lieu of the procedure prescribed in § 225.602 concerning the rinsing of packages, proprietors of taxpaid bottling houses and rectifying plants may rinse and save the rinsings from packages, to any extent desired, which were not rinsed in the internal revenue bonded warehouse at the time of taxpayment and are so marked in accordance with § 225.610: *Provided*, That the rinsings are run into a closed, locked tank for taxpayment of the proof gallon contents through the use of the distilled spirits stamps prescribed by § 225.710. Such rinsings may be used for reduction purposes or in the manufacture of rectified spirits or products subject to the rectification tax. The construction of the tank and the gauging, taxpayment, and use of the rinsings will be in accordance with the provisions of Part 230 or Part 235 of this title, as the case may be.

(68A Stat. 599, 634; 26 U. S. C. 5006, 5194)

§ 225.604 *Gauge and taxpayment of blended brandy.* If the spirits to be withdrawn are brandies blended in accordance with the provisions of section 5023, I. R. C., the storekeeper-gauger shall compute the additional tax at 30 cents per proof gallon on the quantity of spirits in each package at the time of regauge for withdrawal and shall enter in the appropriate column on Form 179 the total amount of tax due under section 5023, I. R. C., in addition to the amount of tax due on the brandy under section 5001, I. R. C.

(68A Stat. 606, 647, 649; 26 U. S. C. 5023, 5244, 5250)

§ 225.605 *Determining tare.* The tare of a package to be withdrawn will be determined in accordance with the provisions of §§ 225.589 to 225.592.

§ 225.606 *Taxpayment.* The proprietor, upon receipt of Form 179 and Form 1520 from the storekeeper-gauger as provided in § 225.602, will cancel, in accordance with the provisions of § 225.713, the necessary number of stamps in the exact amount of the tax due (including any tax due under section 5023, I. R. C.). The proprietor will write or stamp on all copies of Form 179, "W. L. D. stamps requested," attach the cancelled distilled spirits excise tax stamps to one copy of Form 179, and submit all copies of Forms 179 and 1520 to the storekeeper-gauger. The storekeeper-gauger, after determining that the cancelled stamps are in the proper amount of tax shown due on Form 179, will then further cancel and deface the stamps as provided in § 225.713 and

will execute the certificate of taxpayment on all copies of Form 179 certifying to the receipt and further cancellation of stamps in the amount of tax due.

(68A Stat. 595, 614, 629; 26 U. S. C. 5001, 5061, 6801)

§ 225.607 *Issuance of wholesale liquor dealer's stamps.* Upon receipt of Form 179 and Form 1520 with the cancelled distilled spirits excise tax stamps in the full amount of the tax shown on the Form 179, the storekeeper-gauger will issue to the warehouseman a wholesale liquor dealer's stamp for each package reported on Form 1520, and enter on all copies of the Form 1520 the serial number of the wholesale liquor dealer's stamp issued for each package. When issuing the stamps, the storekeeper-gauger will enter on each stamp all the information called for and sign the stamps in the space provided therefor. The storekeeper-gauger may enter his signature by means of a facsimile stamp. Where an appreciable number of wholesale liquor dealer's packages will be filled, the warehouseman must provide the storekeeper-gauger in charge with suitable rubber stamps for the insertion of information common to all wholesale liquor dealer's stamps to be used by him.

(68A Stat. 595, 603, 614; 26 U. S. C. 5001, 5010, 5061)

§ 225.608 *Removal of spirits.* The warehouseman will stamp, mark, and brand the packages, as provided in §§ 225.609 and 225.610, after which he will remove the spirits immediately. When the spirits have been removed, the storekeeper-gauger will execute his statement of the date of withdrawal on the three copies of Form 179, retain one copy of each Form 179 and Form 1520, deliver one copy of Form 179 and two copies of Form 1520 to the warehouseman, and forward one copy of each to the assistant regional commissioner. The copy of Form 179 to which the cancelled stamps are attached shall be forwarded to the assistant regional commissioner. The warehouseman will send one copy of Form 1520 to the vendee.

(68A Stat. 649; 26 U. S. C. 5250)

§ 225.609 *Affixing and canceling stamps.* When packages of distilled spirits are withdrawn from an internal revenue bonded warehouse upon payment of tax (or for exportation) the wholesale liquor dealer, (or export) stamps will be affixed and canceled by the proprietor under the supervision of the storekeeper-gauger before the packages are removed from the warehouse. The stamps must be securely affixed to the Government head of the package with a good adhesive to effectively prevent removal without mutilation. The stamp must be canceled immediately after it has been affixed to the package by imprinting five parallel waved lines across the stamp with a stencil, which will be provided by the proprietor. The stamp will be covered with a protective coating of shellac, lacquer varnish, or glue which is sufficiently transparent to permit legibility of the markings on the stamp, except where the packages are to be transferred to contiguous premises

(68A Stat. 830; 26 U. S. C. 6804)

(68A Stat. 633, 634, 649; 26 U. S. C. 5193, 5194, 5250)

THE JOHN BARLEYCORN DISTILLING CO.
NO. 22, MEADVILLE, PA.

C
D160P

RYE WHISKY
SERIAL NO. 100
FILLED FEB. 14, 1954

QFO _____
OF _____
OT _____

T.P. 2-28-54
KINSED-115P

STAMP

S. NO. 1000

(68A Stat. 633, 634, 649; 26 U. S. C. 5193, 5194, 5250)

hesive, stenciling material, brushes, stencils, branding or cutting equipment, vessels, and every necessary facility for the preparation of the cask or package to be put upon the market, except the instruments for proofing the spirits. The storekeeper-gauger is authorized to require such materials to be furnished and he will see that the cask or package is in every way complete for marketing when it leaves the warehouse.

(68A Stat. 633, 649; 26 U. S. C. 5193, 5250)

§ 225.630 *Application, Form 179.* Application for taxpayment of distilled spirits to be dumped from packages or removed from storage tanks, tank cars, or tank trucks into a gauging tank for subsequent withdrawal in approved containers shall be made by the proprietor of the warehouse on Form 179, in quadruplicate. Where the spirits to be withdrawn are in packages, the serial numbers and original tax gallons will be stated on Form 179, which will be accompanied by Form 1520, in quintuplicate, prepared by the proprietor in the manner provided in § 225.601. If the spirits are to be removed in a tank car or tank truck, the number thereof, and the name or symbols of the owner, shall also be stated on the Form 179. Where the capacity of a gauging tank is insufficient for the quantity of spirits to be shipped in a tank car or tank truck, the lot of spirits described on Form 179 may be dumped into more than one gauging tank, but a separate Form 1520 must be prepared for each such gauging tank listing the packages to be gauged therein, and the entire quantity to be removed must be taxpaid prior to the transfer of any portion thereof to the tank car or tank truck. If the spirits are to be repackaged after taxpayment and prior to removal from the warehouse, the proprietor will so indicate on the application. Removals by tank car or tank truck of spirits withdrawn from warehouse storage tanks shall be made in accordance with the provisions of subpart BB of this part. Where the

lock the outlet thereto, which must remain locked until the spirits and rinse water, if any, have been transferred to the gauging tank, the inlet locked and the spirits gauged and taxpaid in accordance with §§ 225.632 to 225.636.

(68A Stat. 599, 647; 26 U. S. C. 5006, 5244)

(Sec. 205, 49 Stat. 961 as amended, 68A Stat. 616, 634; 26 U. S. C. 5082, 5194, 27 U. S. C. 205)

§ 225.632 *Gauge and tarpayment.* If the spirits to be withdrawn are in packages, the storekeeper-gauger, upon receipt of the Form 179 and Form 1520, will carefully examine and supervise the weighing of each package and enter the weights on Form 1520. Where it is determined that any package bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such package will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. When the contents of the packages have been dumped into the gauging tank, the empty packages, including the char and wood chips, if any, will be thoroughly rinsed: *Provided*, That if the contents of the packages dumped for bulk gauging are to be drawn from the gauging tank for shipment in as many of the original packages as may be required, the packages

to be used as shipping containers need not be rinsed if a declaration to that effect has been made by the proprietor prior to the dumping of the spirits, in which event recovery of spirits by rinsing at the time of dumping for bottling or rectification will be precluded. Water of any temperature may be used to rinse the packages. The rinsings will be added to the spirits dumped from the packages into the gauging tank prior to gauging: *Provided*, That where the proprietor does not wish to add any or all of the rinse water to the spirits in the gauging tank, such rinse water must be poured on the ground or into a sewer in the presence of the storekeeper-gauger. The temperature of water used for rinsing must be marked on the packages used as shipping containers in accordance with § 225.640. Loose char and wood chips, if any, collected from packages, the contents of which have been dumped into bulk gauging tanks after rinsing, must be destroyed in accordance with § 225.962, unless added to the packages which are to be used as shipping containers. The tare of any shipping container must include the weight of loose char and wood chips which are placed therein. After the packages have been dumped and rinsed, all marks and brands shall be obliterated, except where the packages are to be used for shipping of spirits dumped therefrom for gauging, in which case, only the kind of cooperage, serial number of the package, the word "Filled," the date of filling, and the original proof and proof gallons need be obliterated. The spirits in the gauging tank will be gauged with an official hydrometer and the details of the gauge and the number of the gauging tank entered by the storekeeper-gauger on Form 1520. The proof of the spirits shall be adjusted or determined in accordance with the provisions of § 225.577. If the spirits to be withdrawn are contained in a storage tank or tank car or tank truck, they will be drawn into the gauging tank, gauged and reported in the same manner as packages dumped for bulk gauging. Four copies of Form 179 with the storekeeper-gauger's report thereon, duly executed, and four copies of Form 1520 will be delivered by the storekeeper-gauger to the proprietor of the warehouse. One copy of Form 1520 will be retained by the storekeeper-gauger pending taxpayment of the spirits represented thereby.

(68A Stat. 599, 634, 647; 26 U. S. C. 5006, 5194, 5244)

§ 225.633 *Taxpayment of rinsings.* In lieu of the procedure prescribed in § 225.632 concerning the rinsing of packages, proprietors of taxpaid bottling houses and rectifying plants may rinse and save the rinsings from packages, to any extent desired, which were not rinsed in the internal revenue bonded warehouse at the time of taxpayment and are so marked in accordance with § 225.640: *Provided*, That the rinsings are run into a closed, locked tank for taxpayment of the proof gallon contents through the use of the distilled spirits stamps prescribed by § 225.710. Such rinsings may be used for reduction purposes or in the manu-

facture of rectified spirits or products subject to the rectification tax. The construction of the tank and the gauging, taxpayment, and use of the rinsings will be in accordance with the provisions of Part 230 or Part 235 of this title, as the case may be.

(68A Stat. 599, 634; 26 U. S. C. 5006, 5194)

§ 225.634 *Application for certificate of taxpayment, Form 1594.* The proprietor will prepare Form 1594 in duplicate if the consignee is located in the same region, and in triplicate if located in another region. The form will be properly modified to show taxpayment of the spirits gauged in bulk, the number or numbers of the gauging tanks specified on Forms 1520 and covered by the Form 179, and the method of removal from the gauging tank, i. e., by pipeline, tank car, tank truck, or in packages. All copies of Forms 179, 1520, and 1594 accompanied by proper remittance for the tax, will be forwarded by the proprietor to the district director of internal revenue.

(68A Stat. 599, 614, 647, 777; 26 U. S. C. 5006, 5061, 5244, 6311)

§ 225.635 *Certificate of taxpayment, Form 1595.* The district director will issue Form 1595, appropriately modified to cover the spirits gauged in bulk, including the number or numbers of the gauging tanks, and will execute his certificate of taxpayment on all copies of Form 179, enter the serial number of the Form 1595 on all copies of Form 1520, and shall fill in all the required data in the blank spaces on the Form 1595, except those provided in the lower left corner for the verification of the storekeeper-gauger, and will date and sign the certificate. The district director will enter on the original and the copy or copies of Form 1594, in the space provided, the serial number, date, and amount of the certificate issued. The district director will retain one copy each of Forms 179 and 1520 and the original copy of Form 1594. He will mail or deliver the certificate, Form 1595, and the original and remaining copies of Forms 179 and 1520 to the proprietor or his designated agent in accordance with his request in Form 1594. The district director will send one copy of the application, Form 1594, to the assistant regional commissioner. Where the consignee is located in a different region, the district director will send the remaining copy of Form 1594 to the assistant regional commissioner of the region in which the consignee is located.

§ 225.636 *Storekeeper-gauger's verification.* The proprietor shall deliver the certificate of taxpayment, Form 1595, and all copies of Forms 179 and 1520 to the storekeeper-gauger at the internal revenue bonded warehouse. The storekeeper-gauger will transcribe the serial number of the certificate, Form 1595, to his retained copy of Form 1520 and will verify the contents of the gauging tank or tanks and sign the certificate, Form 1595, in the space provided therefor. The certificate must be attached to a board on the gauging tank and if the spirits are to be removed by pipeline or in packages it will be cancelled in the same manner as a wholesale liquor dealer's stamp attached to a package. The

certificate, Form 1595, shall remain attached to the gauging tank until the spirits covered by the certificate have been removed. If the spirits are to be removed by tank car or tank truck, the subsequent procedure shall be in accordance with the applicable provisions of §§ 225.678 and 225.679.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.637 *Release of spirits from gauging tank.* When the certificate of taxpayment has been affixed to the gauging tank, and canceled when required, the storekeeper-gauger will unlock the outlet valve to permit the removal of the spirits. The removal of spirits from the gauging tank must be under the immediate supervision of the storekeeper-gauger. When the spirits have been removed, the storekeeper-gauger will execute his statement of the date of withdrawal on the three copies of Form 179. If the spirits are transferred by pipeline, the storekeeper-gauger will forward one copy each of Forms 179 and 1520 and the canceled Form 1595 to the assistant regional commissioner, retain one copy each of Forms 179 and 1520 and deliver one copy of Form 179 and two copies of Form 1520 to the warehouseman who will immediately deliver one copy of Form 1520 to the storekeeper-gauger at the vendee premises. If the spirits are to be drawn into packages from the gauging tank for transfer to bottling premises, the procedure prescribed in §§ 225.639 to 225.647 will be followed and when all spirits have been drawn into packages, the storekeeper-gauger will dispose of Forms 179, 1520, and 1595 in the manner provided in this section for removals by pipeline. If the spirits are to be removed by tank car or tank truck the procedure will be in accordance with the applicable provisions of §§ 225.674 to 225.679.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.638 *Taxpayment by stamps.* Distilled spirits stamps prescribed by § 225.710 may be used, in lieu of a certificate of taxpayment (Form 1595), to taxpay spirits to be removed by pipeline to a contiguous rectifying plant or taxpaid bottling house, or to be drawn into packages, tank cars, or tank trucks, to which wholesale liquor dealer's stamps will be affixed. When spirits are to be so taxpaid, the proprietor, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger pursuant to § 225.632 will cancel the necessary number of stamps in the exact amount of the tax due by perforation (as prescribed by § 225.714), or by legibly writing or stamping on each stamp with indelible (India) ink, his name, the registry number of the warehouse, and the serial number of Form 179; for example, "John Doe Distilling Company, Internal Revenue Bonded Warehouse 63, New Jersey, Form 179, Serial Number _____". Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only as authorized by § 225.713. The assistant regional commissioner may in his discretion, approve a suitable abbreviation of the required information for cancella-

tion, including the initials for the name of the proprietor if adequate for identification; for example, "J. D. Dist. Co. IRBW 63-NJ-179 S/N -----". The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The proprietor will then attach the canceled distilled spirits stamps to one copy of Form 179 and submit all copies of Forms 179 and 1520 to the internal revenue officer. The internal revenue officer will determine that the canceled stamps are in the full amount of the tax shown due on the Form 179 and will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp, and will execute a certificate on all copies of Form 179 certifying to the receipt and further cancellation of stamps in the amount of tax due. The serial number of the Form 179 will be entered on Form 1520 in the column provided for the kind and serial number of the stamp, as an indication that taxpayment was by use of distilled spirits stamps. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such copy of Form 179 and the accompanying copy of Form 1520 will be attached to the board on the gauging tank and remain thereon until the spirits covered by the stamps have been removed. The release of the spirits from the tank and the disposition of the forms will be in accordance with the provisions of § 225.637.

(68A Stat. 599, 614, 634, 829; 26 U. S. C. 5006, 5061, 5194, 6801)

§ 225.639 *Procurement of wholesale liquor dealer's stamps.* Where spirits in gauging tanks are to be removed in packages with wholesale liquor dealer's stamps attached, the proprietor will notify the storekeeper-gauger at the time of gauging for taxpayment by writing on Form 179 "WLD stamps to be affixed to packages for removal". Upon taxpayment the storekeeper-gauger will permit the filling and gauging of the packages. After all packages are filled, the proprietor will gauge the contents thereof and prepare Form 1520, in quadruplicate, as provided in § 225.640. He will deliver all copies of Form 1520 to the storekeeper-gauger for verification and the issuance of the stamps.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.640 *Refilling, gauging, and marking packages of taxpaid spirits drawn from a gauging tank.* The warehouseman will fill and mark the packages under the supervision of an internal revenue officer. Packages into which the spirits are drawn must be marked and branded in letters and figures not less than one-half inch in height to show the name of the distiller or person in whose name the spirits were produced, the registry number of the distillery, the city or town and State in which the distillery is located, the proof at which distilled, and the kind of spirits, all as shown on the original packages and as illustrated in § 225.611. In addition to the above, the packages will be marked

and branded in letters and figures not less than one-half inch in height to show that they are consolidated packages, the kind of cooperage into which the spirits were drawn, the serial number of the package (in accordance with § 225.411), the warehouse number and State in which located, the kind of cooperage in which the spirits were stored and the number of months the youngest spirits in the lot were in storage, the date the spirits were taxpaid, and the serial number of the wholesale liquor dealer's stamp. Where spirits are drawn from the gauging tank for shipment in packages from which dumped, the refilled packages will be stenciled "Rinsed" or "Not Rinsed," as the case may be. Where the packages are rinsed, the temperature of the water used for rinsing will also be marked on each package, as for example, "Rinsed—115F." A similar notation will be made on Form 1520. The additional information required by this section to be marked on the package may be abbreviated as illustrated in § 225.641. The warehouseman will enter the details of the gauge on each copy of Form 1520.

(68A Stat. 599, 614, 639; 26 U. S. C. 5006, 5061, 5212)

§ 225.641 *Marks and brands illustrated.* The following cut illustrates the order and manner in which the additional marks and brands required by § 225.640 shall be applied to the head of each package of spirits filled from a gauging tank after bulk gauge and taxpayment in such tank:



(68A Stat. 599, 614, 639; 26 U. S. C. 5006, 5061, 5212)

§ 225.642 *Issuance of wholesale liquor dealer's stamps.* Upon receipt of Form 1520, the storekeeper-gauger in charge will issue a wholesale liquor dealer's stamp for each package listed on the form. When issuing the stamps, the storekeeper-gauger will enter on each stamp all the information called for and sign the stamps in the space provided therefor. The storekeeper-gauger may enter his signature by means of a facsimile stamp. Where an appreciable number of wholesale liquor dealer's packages will be filled, the warehouseman must provide the storekeeper-gauger in charge with suitable rubber stamps for the insertion of information common to all wholesale liquor dealer's

stamps to be used by him. The total gallonage for which wholesale liquor dealer's stamps are issued shall in no case exceed the taxable gallons shown on Form 179 unless due to normal variations in gauge.

(68A Stat. 602, 620; 26 U. S. C. 5010, 5115)

§ 225.643 *Stamp stub.* The storekeeper-gauger in charge shall enter on the stub connected with each stamp data similar to that entered on the stamp, to preserve a perfect record of the detached stamp.

(68A Stat. 602, 620; 26 U. S. C. 5010, 5115)

§ 225.644 *Wholesale liquor dealer's stamp books.* Wholesale liquor dealer's stamps will be furnished by district directors to assistant regional commissioners upon request. Assistant regional commissioners will supply storekeeper-gaugers in charge of bonded warehouses where such stamps are used with such quantities of stamps as may be required. When all the stamps in a book have been issued, the storekeeper-gauger in charge will return the stub book to the assistant regional commissioner.

(68A Stat. 602, 620; 26 U. S. C. 5010, 5115)

§ 225.645 *Record and report of wholesale liquor dealer's stamps.* Storekeeper-gaugers having custody of wholesale liquor dealer's stamps at internal revenue bonded warehouses will keep a record of such stamps received and used on part 1 of Form 118, properly modified for the purpose, and as required by instructions on the form or as issued in respect thereto. The record will be kept in bound form available for inspection by other internal revenue officers. The storekeeper-gauger will prepare his monthly report on part 2 of Form 118, properly modified and in duplicate, retain one copy and furnish one copy to the assistant regional commissioner.

§ 225.646 *Disposition of Form 1520.* The storekeeper-gauger in charge will enter the serial numbers of the wholesale liquor dealer stamps in the proper column on each Form 1520, opposite the description of the package for which the stamp is issued. He will then return two copies of Form 1520 to the warehouseman with the stamps, forward one copy of the form to the assistant regional commissioner and retain one copy. The retained copy will be placed in a permanent file as authority for issuance of the stamps. The warehouseman will forward one copy of Form 1520 to the vendee. *Provided,* That where liquors are to be consigned to taxpaid bottling houses or rectifying plants the warehouseman will forward one copy of Form 1520 to the storekeeper-gauger at the vendee premises who will deliver such copy to the vendee.

(68A Stat. 602, 620; 26 U. S. C. 5010, 5115)

§ 225.647 *Affixing and canceling stamps.* Upon receipt from the storekeeper-gauger in charge of the Form 1520 and accompanying stamps, the warehouseman will affix the stamps to the packages and cancel the same under the supervision of a storekeeper-gauger. The stamps will be affixed, canceled, and protected in the manner as prescribed

in § 225.609, after which the packages must be immediately removed from the warehouse.

SUBPART BB—TAXPAID WITHDRAWALS IN TANK CARS AND TANK TRUCKS

§ 225.670 *Application, Form 179.* Application to withdraw spirits from storage tanks for taxpayment and removal in tank cars or tank trucks shall be made by the warehouseman on Form 179, in quadruplicate, as in the case of withdrawals from such tanks for taxpayment in packages, except that the application will show that the transportation will be by tank car or tank truck. (68A Stat. 599, 634; 26 U. S. C. 5006, 5194)

§ 225.671 *Report of gauge, Form 1520.* All copies of Form 179 shall be delivered to the storekeeper-gauger, whereupon the spirits will be run into a gauging tank and gauged for removal. The storekeeper-gauger shall enter the details of the gauge on Form 1520, in quintuplicate. The proof at which the spirits were distilled and the number and name or symbols of the owner of the tank car or tank truck shall, in every instance, be noted by the storekeeper-gauger on Form 1520. The storekeeper-gauger will execute his report on each copy of Form 179 and will return all copies thereof, with four copies of Form 1520 attached, to the proprietor, who will enter in the space provided therefor on each copy of Form 179 the description of the spirits gauged. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.672 *Application for certificate of taxpayment, Form 1594.* The proprietor will forward all copies of Form 179 and Form 1520, with Form 1594, appropriately modified when necessary, in duplicate if the vendee is located in the same region and in triplicate if the vendee is located in a different region, accompanied by proper remittance for the tax, to the district director of internal revenue. (68A Stat. 634, 777; 26 U. S. C. 5194, 6311)

§ 225.673 *Certificate of taxpayment, Form 1595.* The district director will issue Form 1595, appropriately modified when necessary, enter the serial number of the certificate in the column on all copies of Form 1520 provided for entering the serial numbers of taxpaid stamps, and execute his certificate of taxpayment on Form 179. The district director will fill in all the required data in the blank spaces on the certificate, except those provided in the lower left corner for the verification of the storekeeper-gauger, and date and sign the certificate. This certificate is not negotiable and shall not be used on any tank car or tank truck other than the one described therein. The district director will enter on the original and the copy or copies of Form 1594, in the space provided, the serial number, date, and amount of the certificate issued. The district director will retain one copy each of Form 179 and Form 1520, and the original copy of Form 1594. He will mail or deliver the certificate (Form 1595) and the original and remaining copies of Form 179 and Form 1520 to the proprietor or his designated

agent, in accordance with the vendor's request in Form 1594. The district director will send one copy of the application (Form 1594) to the assistant regional commissioner. Where the vendee is located in a different region, the district director will send the remaining copy of Form 1594 to the assistant regional commissioner of the region in which the vendee is located. (68A Stat. 599, 634; 26 U. S. C. 5006, 5194)

§ 225.674 *Taxpayment by stamps.* Distilled spirits stamps prescribed by § 225.710 may be used, in lieu of a certificate of taxpayment (Form 1595), to taxpay spirits to be removed by tank car or tank truck to which a wholesale liquor dealer's stamp will be affixed. When spirits are to be so taxpaid, the proprietor, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger pursuant to § 225.671, will cancel the necessary number of stamps in the exact amount of the tax due by perforation (as prescribed by § 225.714) or by legibly writing or stamping on each stamp with indelible (India) ink, his name, the registry number of the warehouse, and the serial number of Form 179; for example, "John Doe Distilling Company, Internal Revenue Bonded Warehouse 63, New Jersey, Form 179, Serial No. _____." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only as authorized by § 225.713. The assistant regional commissioner may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Dist. Co. IRBW 63-NJ-179 S/N _____." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The proprietor will write or stamp on all copies of Form 179, "W. L. D. Stamp requested," and will enter on Forms 1520 the statement "Consigned to:" followed by the name and address of the consignee. The proprietor will then attach the canceled distilled spirits stamps to one copy of Form 179 and submit all copies of Forms 179 and 1520 to the internal revenue officer. The internal revenue officer will determine that the canceled stamps are in the full amount of the tax shown due on the Form 179 and will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp, and will execute a certificate on Form 179 certifying to the receipt and further cancellation of stamps in the amount of the tax due. The serial number of the Form 179 will be entered on Form 1520 in the column provided for the kind and serial number of the stamp, as an indication that taxpayment was by use of distilled spirits stamps. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such

copy of Form 179, and the accompanying Form 1520, will be attached to the board on the gauging tank and the storekeeper-gauger will release the spirits for transfer to the tank car or tank truck. Such copy of Forms 179 and 1520 shall remain thereon until the spirits covered by the stamps have been removed. Forms 179 and 1520 will be disposed of in accordance with § 225.679. (68A Stat. 599, 614, 634, 829; 26 U. S. C. 5006, 5061, 5194, 6801)

§ 225.675 *Issuance of wholesale liquor dealer's stamp.* Upon receipt of Forms 179 and 1520 with the cancelled stamps in the full amount of the tax shown on Form 179 the storekeeper-gauger in charge will issue a wholesale liquor dealer's stamp for the tank car or tank truck, as the case may be, in accordance with the applicable provisions of §§ 225.642 and 225.643 except that a facsimile signature will not be placed on the wholesale liquor dealer's stamp issued for such tank car or tank truck. He will enter the number of the wholesale liquor dealer's stamp on all copies of Form 1520 and deliver the wholesale liquor dealer's stamp to the warehouseman. (68A Stat. 603, 634; 26 U. S. C. 5010, 5194)

§ 225.676 *Route board.* Tank cars and tank trucks used for the transportation of taxpaid distilled spirits must be equipped with a route board at least 10 by 12 inches in size, to which Form 1595 or wholesale liquor dealer's stamp can be attached. Such board shall be of substantial material and shall be affixed permanently and securely to the tank car or tank truck by roundheaded or carriage bolts, nutted and riveted, battered, or welded. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.677 *Bill of lading.* The proprietor shall incorporate in the bill of lading, if any, a description of Form 1595 as follows:

Form 1595, Serial Number _____
Owner and Number of Car (or Truck) _____
Vendor _____ Address _____
Vendee _____ Address _____

Where no bill of lading is issued, as in the case of transfer of a tank car between plants by switching arrangement, the warehouseman shall incorporate in Form 1520 such description of Form 1595. Where a wholesale liquor dealer's stamp is used in lieu of Form 1595, the proprietor shall incorporate in the bill of lading, if any, a description of the stamp, showing the kind of stamp and its serial number. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.678 *Storekeeper-gauger's verification.* If taxpayment is by means of a certificate of taxpayment (Form 1595), the proprietor shall give the certificate, the bill of lading, if any, and all copies of Form 179 and Form 1520, to the storekeeper-gauger. The storekeeper-gauger will verify the contents of the tank car or tank truck, and the description of Form 1595 on the bill of lading or Form 1520, as the case may be, determine the security of the route board, and, if no discrepancies are found, he will note the

serial number of the certificate, on his retained copy of Form 1520, and date and sign the certificate in the space provided therefor. The proprietor shall then affix the certificate to the route board in the presence of the storekeeper-gauger. The certificate must be securely affixed to the route board with a good adhesive and with a tack in each corner, whereupon it will be canceled in the manner as provided in § 225.609. The certificate will then be covered with a coating of transparent shellac, lacquer, or varnish, to prevent its easy removal or alteration. If taxpayment is by means of distilled spirits stamps and evidenced by a wholesale liquor dealer's stamp, the proprietor shall give the bill of lading, if any, to the storekeeper-gauger who shall verify the contents of the tank car or tank truck, the description of the wholesale liquor dealer's stamp on the bill of lading, if any, and determine the security of the route board. If no discrepancies are found, the proprietor shall affix the wholesale liquor dealer's stamp to the route board in the presence of the storekeeper-gauger. The wholesale liquor dealer's stamp shall be affixed, canceled, and protected in the same manner as a certificate of taxpayment, Form 1595.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.679 *Release of tank car or tank truck.* When the certificate of taxpayment (Form 1595) or wholesale liquor dealer's stamp has been affixed to the route board and cancelled, and the tank car or tank truck sealed by the proprietor, the storekeeper-gauger will return the bill of lading, if any, to the proprietor, release the tank car or tank truck for shipment, execute his statement of withdrawal on all copies of Form 179, and note on all copies of Form 1520 the date of the release of the tank car or tank truck. The storekeeper-gauger will forward one copy of Form 179 and Form 1520 to the assistant regional commissioner, retain one copy of each form, and deliver one copy of Form 179 and two copies of Form 1520 to the proprietor, who will forward one copy of Form 1520 to the storekeeper-gauger at the vendee premises and retain the remaining copy. Where taxpayment is by means of distilled spirits stamps, the storekeeper-gauger will forward to the assistant regional commissioner the Form 179 with the stamps attached and the accompanying Form 1520. Where the vendee is located in a different region and the tax is paid by distilled spirits stamps, the storekeeper-gauger will send the remaining copy of Form 179 and Form 1520 to the assistant regional commissioner of the region in which the vendee is located; where the vendee is located in the same region the remaining copy of Form 179 and Form 1520 will be destroyed.

(68A Stat. 634; 26 U. S. C. 5194)

IN TANK CARS OR TANK TRUCKS RECEIVED IN BOND

§ 225.680 *Procedure.* Where spirits are received in bond in tank cars or tank trucks at an internal revenue bonded warehouse and taxpaid thereat, the pro-

cedure prescribed in §§ 225.670 to 225.679 for the taxpayment of tank cars or tank trucks of spirits filled from warehouse storage tanks will be followed, except that the spirits in the tank car or tank truck need not be regauged but may be taxpaid on the filling gauge under the provisions of §§ 225.382 and 225.383.

(68A Stat. 599, 614, 634, 647; 26 U. S. C. 5006, 5061, 5194, 5245)

§ 225.681 *Report of gauge, Form 1520.* Where the spirits in a tank car or tank truck are taxpaid according to the filling gauge the proprietor will make a copy of such gauge in quintuplicate, for use in taxpayment.

(68A Stat. 634, 647; 26 U. S. C. 5194, 5245)

SUBPART CC—TAXPAID WITHDRAWALS IN CASES

§ 225.700 *Application, Form 1519.* Application for taxpayment and withdrawal of distilled spirits in cases bottled in bond shall be made by the warehouseman on Form 1519, in triplicate. Each withdrawal will be made on a separate Form 1519, except that two or more withdrawals on the same day of spirits produced by the same distiller at the same distillery may be made on one form. The storekeeper-gauger will inspect the cases to be removed, and if any case bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such case will be detained by him pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. The warehouseman will cancel the necessary stamps in the exact amount of the tax due in the manner provided by § 225.713. He will then attach the stamps to Form 1519 and submit all copies to the internal revenue officer. The internal revenue officer will determine that the canceled stamps are in the full amount of the tax shown due on the Form 1519 and will then complete the cancellation of the stamps as provided by § 225.713 and execute the certificate on Form 1519 certifying to the receipt and cancellation of stamps for the amount of taxes due.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.701 *Withdrawal of spirits.* The spirits will be promptly withdrawn from the warehouse. On the date of withdrawal there will be stenciled on each case the word "Taxpaid," the date when stamps were canceled and surrendered to the storekeeper-gauger in payment of such tax, followed by the name and title of the storekeeper-gauger. Immediately upon withdrawal the storekeeper-gauger will enter on each copy of Form 1519 the date of withdrawal, sign each copy, and forward the copy to which the canceled stamps are attached to the assistant regional commissioner, deliver one copy to the warehouseman, and file one copy in his office.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

SUBPART DD—DISTILLED SPIRITS EXCISE TAX STAMPS

§ 225.710 *Distilled Spirits Excise Tax stamps.* Distilled Spirits Excise Tax stamps may be purchased in various denominations by the warehouseman from the district director of internal

revenue of the district in which the internal revenue bonded warehouse is located. The stamps may be purchased in advance of actual needs, in order to be readily available when needed. The stamps may not be purchased by one warehouseman from another, nor may they, except in cases of emergency, be purchased from district directors of other districts. Warehousemen shall not sell or transfer stamps, except that they may (a) transfer such stamps to other premises operated by themselves as provided in § 225.715 pursuant to the prior approval of the assistant regional commissioner; or (b) return such stamps for redemption in accordance with § 225.716. Distilled spirits stamps for taxpayment of distilled spirits as authorized by this part, used or unused may not be purchased, sold, or possessed, except as specifically authorized by this part.

(68A Stat. 599, 614, 829, 830; 26 U. S. C. 5006, 5061, 6801, 6805)

§ 225.711 *Form 427-D.* With each purchase of stamps the warehouseman will submit to the district director Form 427-D, in triplicate, properly filled out. The district director will stamp the date of sale on all copies of Form 427-D, return one copy to the warehouseman with the stamps and send one copy to the appropriate assistant regional commissioner. The remaining copy of Form 427-D will be filed in the district director's office so that all purchases of stamps may be verified at any time. The district director will refuse to sell stamps when such form is not submitted.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.712 *Remittance; delivery.* All orders for stamps must be accompanied by proper remittance in a sum equal to the value of the stamps. Unless the stamps are called for by the warehouseman or his agent in person, they will be sent to him by ordinary mail, registered mail, or express, at the expense of the warehouseman. When the stamps are not called for in person the warehouseman will specify on Form 427-D the means (ordinary mail, registered mail, or express) by which he desires the stamps sent to him. If the stamps are ordered sent by ordinary mail, the warehouseman shall enclose with his order sufficient postage stamps, or a separate remittance to cover the postage; if the stamps are ordered sent by registered mail, the warehouseman shall include the postage and registry fee and any required registry surcharge, as provided by the postal laws and regulations. If the remittance is other than cash the sum to cover the postage, registry fee, or surcharge must not be included in the remittance covering the cost of the stamps. The local postmaster should be consulted relative to the amount of the registry fee and surcharge required. Stamps forwarded by express will be sent "collect."

(68A Stat. 599, 614, 777; 26 U. S. C. 5006, 5061, 6311)

§ 225.713 *Manner of canceling stamps.* At the time of delivery of the stamps to the internal revenue officer for payment of the distilled spirits tax on distilled spirits, the warehouseman shall

cancel the stamps by perforation (as prescribed by § 225.714) or by legibly writing or stamping on each stamp with indelible (India) ink, his name, registry number, and the serial number of Form 179 or Form 1519, as the case may be; for example, "John Doe Distilling Company, Internal Revenue Bonded Warehouse No. 63, New Jersey, Form 1519, Serial No. _____".

Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the withdrawal form must not be entered on the stamp in advance of actual use in taxpayment. The assistant regional commissioner may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Dist. Co. IRBW 63-NJ-1519 S/N _____". The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The internal revenue officer, after determining that the canceled stamps are in the proper amount, will further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border of each stamp.

(68A Stat. 599, 614, 634, 829; 26 U. S. C. 5006, 5061, 6194, 6801)

§ 225.714 *Manner of perforating stamps.* If the proprietor's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined, either (a) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (b) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.715 *Transfer to other premises.* A proprietor operating other plants on the same or contiguous premises may transfer stamps to such plants from time to time pursuant to prior approval of the assistant regional commissioner. When the internal revenue bonded warehouse is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other premises in which the stamps could be used, he may transfer such stamps to such other premises for use thereat pursuant to prior approval of the assistant regional commissioner. If the premises to which the stamps are to be transferred is located in another region, the assistant regional commissioner granting authority to transfer the stamps will advise the assistant regional commissioner of the other region so that he may know that the receiving premises is en-

titled to receive the stamps. The latter assistant regional commissioner will also inform the internal revenue officer assigned to the receiving premises of the authority to receive the stamps. A report of all transfers of stamps must be made on Form 1697, as provided in § 225.719.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

§ 225.716 *Redemption of distilled spirits stamps.* Distilled spirits excise tax stamps for taxpayment of distilled spirits may be redeemed pursuant to section 6805, Internal Revenue Code:

(68A Stat. 830; 26 U. S. C. 6805)

§ 225.717 *Claim.* Proprietors of internal revenue bonded warehouses desiring to have distilled spirits stamps, described in § 225.716, redeemed under the provisions of section 6805, I. R. C., must make claim on Form 843 to the assistant regional commissioner. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the assistant regional commissioner establishing such destruction must accompany the claim.

(68A Stat. 830; 26 U. S. C. 6805)

§ 225.718 *Unredeemable stamps.* Distilled spirits stamps may not be redeemed while distilled spirits on which the stamps can be used in taxpayment remain on hand and while the internal revenue bonded warehouse remains in a qualified status unless it is shown that the manner of taxpaying spirits thereat is such that the stamps may not be used. When an internal revenue bonded warehouse is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other premises at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat in accordance with § 225.715. Notation of the transfer must be made on Form 1697 for both premises.

(68A Stat. 599, 614, 830; 26 U. S. C. 5006, 5061, 6805)

§ 225.719 *Stamp report.* The proprietor of the internal revenue bonded warehouse shall make a report on Form 1697 of all distilled spirits stamps received and used at his warehouse. Entries will be made thereon and the report submitted in accordance with the headings of the various lines and columns on the form and the instructions printed thereon or issued in respect thereto and as required by this part. When distilled spirits stamps are surrendered for redemption, in accordance with §§ 225.716 and 225.717, or are transferred to, or received from, other premises operated by the proprietor, as authorized in § 225.715, a report thereof must be made on Form 1697, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the

stamps were transferred or from which they were received.

(68A Stat. 599, 614; 26 U. S. C. 5006, 5061)

SUBPART EE—TRANSFERS IN BOND BETWEEN INTERNAL REVENUE BONDED WAREHOUSES

§ 225.730 *Kinds of containers.* Distilled spirits may be transferred in bond from one internal revenue bonded warehouse to another such warehouse (a) in distiller's original packages; (b) in packages to which the contents of such original packages were transferred; (c) in cases where the spirits were bottled in bond; (d) in packages, tank cars, or tank trucks filled from warehouse tanks; or (e) in tank cars or tank trucks filled at the distillery.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.731 *Mingling in gauging tank of spirits intended for transfer in bond.* Only spirits which are eligible for mingling in a warehouse storage tank (see § 225.377) may be mingled in a warehouse gauging tank preparatory to transfer in bond. Spirits in packages may not be dumped together into gauging tanks preparatory to repackaging for transfer in bond to another internal revenue bonded warehouse.

(68A Stat. 634, 647; 26 U. S. C. 5194, 5246)

§ 225.732 *Sealed conveyances for packages.* Each conveyance used to transport packages of distilled spirits in bond, which is to be sealed in order that the weighing of spirits upon receipt at an internal revenue bonded warehouse will not be required, must be constructed in such a manner that all openings may be closed and secured by seals in order that access cannot be gained without showing evidence of tampering. Cap seals to be furnished by the Government will be used in sealing the conveyance and such seals will be affixed as soon as the vehicle is loaded. If the conveyance is not constructed in accordance with the provisions of this section, the storekeeper-gauger will notify the consignor proprietor that its use as a sealed conveyance cannot be authorized and, if distilled spirits are conveyed therein, that weighing of the packages at the consignee premises will be required. Under such circumstances, cap seals will not be applied to the conveyance.

TRANSFERS BETWEEN WAREHOUSES IN SAME REGION

§ 225.733 *Application, Form 236.* Where the transfer is to be made between warehouses in the same region, the proprietor of the receiving warehouse shall execute an application for the transfer of spirits on Form 236. The applicant shall enter all applicable data indicated by the form, including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle and the type of conveyance. If the applicant desires to receive packages of spirits in sealed conveyances without weighing the packages at time of receipt he should indicate on part 1 of Form 236 that the packages are to be transferred in sealed conveyances by entering the phrase "Government-sealed conveyance." The name of the carrier shall not be specified on Form

236. The applicant shall prepare an original and five copies of the Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.734 *Storekeeper-gauger's certificate of sufficiency of bond.* Upon receipt of Form 236 by the storekeeper-gauger in charge, he will compare the penal sum of the bond as stated in the application with his record furnished by the assistant regional commissioner pursuant to § 225.314. If the warehouse bond is given in the maximum penal sum of \$200,000 he will certify to the sufficiency thereof on Form 236, and return all six copies of the form to the proprietor of the warehouse. If the warehouse bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all six copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. Such forms shall be invalid for the transfer of spirits. If the storekeeper-gauger certifies that the bond is sufficient, the proprietor will forward all six copies of the Form 236 to the proprietor of the consignee-warehouse. The proprietor of the consignee-warehouse will be responsible for all outstanding valid Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the consignee-warehouse.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.735 *Transfers in packages.* When the proprietor of the shipping warehouse desires to make shipment of spirits in original packages, or in packages previously filled from warehouse storage tanks, or of blended brandies in packages filled in the brandy-blending department, he will prepare an original and five copies of Form 1619 filling in the heading and giving details as to serial numbers of packages, date of original entry for deposit, original gauge and last gauge (if other than the original). In the case of blended brandies the proprietor shall also show on Form 1619 the date and serial number of the Form 1685 covering the blending of the brandies, the date of the original entry of the oldest brandy in the blend and the date of the original entry of the youngest brandy in the blend. The proprietor shall execute on the six copies of Form 236 a description of the packages to be transferred and will give all copies of Forms 236 and 1619 to the storekeeper-gauger. Upon receipt of the Forms 236 and 1619 the storekeeper-

gauger will weigh and examine the packages and where it is determined that any package bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such package will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. The storekeeper-gauger will enter the shipping gross weights on Form 1619. The quantity to be transferred shall not exceed the maximum stated in the application. Upon withdrawal for transfer to noncontiguous premises, the word "Transferred" followed by the date of transfer, the number of the receiving warehouse, and the State in which such warehouse is located, will be plainly and durably stenciled on the Government head of the package in letters, and figures not less than one-half inch in height. These marks may be abbreviated as follows:

TRANS. 8-1-54
I. R. B. W. 4-N. Y.

Forms 236 and 1619 will be disposed of in accordance with the provisions of § 225.750.

(68A Stat. 606, 647; 26 U. S. C. 5023, 5246)

§ 225.736 *Transfers in cases.* When the proprietor desires to transfer cases of distilled spirits bottled in bond, he will prepare an original and five copies of Form 1620 showing thereon all information called for by the form. The proprietor shall execute on the six copies of Form 236 a description of the cases to be transferred and will give all copies of Forms 236 and 1620 to the storekeeper-gauger. Upon receipt of Forms 236 and 1620 the storekeeper-gauger will examine the cases to be transferred. If any case bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such case will be detained by the storekeeper-gauger pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. Necessary remarks concerning the condition of any particular case at time of shipment should be made on all copies of the Form 1620. The quantity to be transferred shall not exceed the maximum stated in the application. Upon withdrawal for transfer to noncontiguous premises, the word "Transferred" followed by the date of transfer, the number of the receiving warehouse, and the State in which such warehouse is located, will be plainly and durably stenciled or stamped upon the Government side of each case in letters and figures not less than three-eighths inch in height. These marks may be abbreviated as follows:

TRANS. 3-29-54
I. R. B. W. 25-N. Y.

Where there is insufficient space on the Government side of the case, these marks may be placed upon another side of the case. Forms 236 and 1620 will be disposed of in accordance with the provisions of § 225.750.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.737 *Transfers in tank cars and tank trucks.* When the proprietor desires to transfer spirits in a previously filled tank car or tank truck, he will

prepare an original and five copies of Form 1520, copying the details of the entry Form 1520, except that if the contents of the tank car or tank truck were previously regauged owing to the evidence of loss of spirits therefrom, the transfer Form 1520 will show both the original contents and the contents shown by the regauge. The proprietor shall execute on the six copies of Form 236 a description of the tank car or tank truck to be transferred and will deliver all copies of Forms 236 and 1520 to the storekeeper-gauger. Upon receipt of Forms 1520 and 236 the storekeeper-gauger will inspect the car or truck and if it bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such car or truck will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. Forms 236 and 1520 will be disposed of in accordance with the provisions of § 225.750. The quantity to be transferred shall not exceed the maximum stated in the application.

(68A Stat. 634, 647; 26 U. S. C. 5194, 5246)

§ 225.738 *Transfers from storage tanks, in packages, tank cars, or tank trucks.* When the proprietor desires to transfer spirits in packages, tank cars, or tank trucks, to be filled from warehouse storage tanks, he will deliver a copy of Form 236 to the storekeeper-gauger in charge of the warehouse and furnish him with a complete description of the spirits. Upon receipt of the Form 236 the spirits designated to be transferred will be drawn into packages, gauged, marked, and branded, or run into a gauging tank, gauged, and conveyed by pipeline into a railroad tank car or tank truck, constructed and marked as provided in this subpart. The storekeeper-gauger will prepare a report of the gauge on an original and five copies of Form 1520, and note on each copy of the form the proof at which the spirits were distilled. The quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give the copy of Form 236 and the six copies of Form 1520 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the packages, tank cars, or tank trucks to be transferred. He shall immediately return all copies of the forms to the storekeeper-gauger in charge. Forms 236 and 1520 will be disposed of in accordance with § 225.750.

(68A Stat. 634, 647; 26 U. S. C. 5194, 5246)

§ 225.739 *Mixing of different spirits prohibited.* Spirits which were produced from different materials, or by two or more distillers, or at two or more distilleries or during different distilling seasons and years, or which differ in kind according to the standards of identity established under the Federal Alcohol Administration Act, or which are otherwise heterogeneous, may not be mingled in filling packages, tank cars or tank trucks from storage tanks.

(49 Stat. 981 as amended; 68A Stat. 616, 634; 27 U. S. C. 205; 26 U. S. C. 5082, 5194)

§ 225.740 *Type of motor carrier.* Transportation by tank trucks shall be made (a) by a motor carrier licensed under the Motor Carrier Act of 1935 or an applicable State law, or a private carrier employed by, or acting as agent for, the consignor or consignee, who is actively and regularly engaged generally in the legitimate business of transportation, who possesses adequate facilities to insure safe delivery at destination of any distilled spirits transported by him, and who is approved by the assistant regional commissioner; or (b) by the consignor or consignee acting as a private carrier. (68A Stat. 634, 647; 26 U. S. C. 5194, 5246)

§ 225.741 *Bond; transportation by motor carrier.* Motor carriers, as defined in § 225.740, desiring to transport distilled spirits in bond, in tank trucks, must file with the assistant regional commissioner a bond on Form 49, modified to read "Bond to Transport Distilled Spirits". The penal sum of the bond shall be at the rate of \$75,000 for each such tank truck and not more than \$200,000 for the total of all tank trucks used. The bond shall be filed in triplicate, appropriately modified. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.742 *Bond; transportation by consignor or consignee.* A consignor or consignee, in order to transport distilled spirits in bond, or to remove wine spirits for use in the preparation of wine, in tank trucks controlled and operated by such consignor or consignee, must file with the assistant regional commissioner, a bond on Form 49, properly modified, in the penal sum specified in § 225.741, provided that in lieu of filing such bond, the consignor warehouseman or consignee distiller or warehouseman may file consent of surety, Form 1533, on his bond, Form 30, Form 30½, or Form 1571, as the case may be, extending the terms thereof to cover the tax, together with penalties and interest, for which he may become liable, on all distilled spirits transported by him in tank trucks. If the transportation is by the consignor or consignee warehouseman and the maximum of his bond, Form 1571, is not sufficient when computed as set forth in § 225.741, an additional bond on Form 49 or 1571 in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee distiller, and the maximum of his bond, Form 30 or Form 30½, is not sufficient when computed as set forth in § 225.741, an additional bond on Form 49 or on Form 30, or Form 30½, as the case may be, in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee proprietor of a bonded wine cellar, he may file a consent of surety on his bond, Form 700, and an additional bond on Form 49 in a sufficient penal sum to cover the additional liability. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.743 *Marking and construction of tank truck.* Every tank truck used to transport distilled spirits in bond must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis

of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cutouts. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery from a compartment by meter or otherwise, will not be permitted. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner in letters at least four inches in height. If the tank truck consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A", "B", etc., and the capacity in wine gallons of each compartment must be marked thereon. Provision shall also be made for protection, against the weather, of the label by the use of celluloid or equally substantial material. Tank trucks shall be so constructed that the contents of each compartment will drain completely, even when the ground is not perfectly level. Suitable ladders and catwalks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.744 *Marking and construction of tank car.* Each tank car used to transport distilled spirits in bond must have permanently and legibly marked or painted thereon its number, capacity in gallons, and the name and symbols of the owner. The dome or manhole covers on the tank car shall be equipped with facilities for sealing with a cap seal when closed, and the outlet valves or other openings to or from the car shall be so constructed that they may be closed and securely fastened on the inside or sealed in like manner. If the car is not so constructed, the storekeeper-gauger will not permit it to be filled. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.745 *Seals.* Cap seals, to be furnished by the Government, will be used for sealing the tank car or tank truck and such seals will be attached as soon as the car or truck is filled. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.746 *Inspection of tank car or tank truck.* Upon receiving an application, Form 236, for the transfer of spirits in bond in a tank car or tank truck, the storekeeper-gauger will inspect the tank car or tank truck to see that the conveyance is properly marked and may be effectively sealed. If the car or truck does not meet such requirements, the officer will not permit it to be filled. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.747 *Filling of tank car or tank truck.* Tank cars or tank trucks must be filled in the immediate presence of the storekeeper-gauger. The pipeline or hose connection to the tank car or tank truck must be in full view of the officer and must not be connected or used, except in his presence. The proprietor will prepare the car or truck for sealing and the officer will seal the car or truck as soon as it is filled. The officer will enter for each compartment of the conveyance on Form 1520, covering the gauge of the spirits, the level of the spirits above or below the full mark, and the temperature of the spirits at filling, for example: "Filled two inches above full mark at 80° F." In addition, for transfers in tank trucks, the storekeeper-gauger will enter on Form 1520 the name of the carrier, the number of the tank truck, the State license number of the truck, the driver's full name, and the driver's permit number and the State issuing the same, the destination and the date of shipment. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.748 *Route board.* Tank cars or tank trucks used for the transportation of distilled spirits in bond must be equipped with a route board at least 10 by 12 inches in size. Such board shall be of substantial material and shall be affixed permanently and securely to the tank car or tank truck by roundheaded or carriage bolts, nutted and riveted, battered or welded. (68A Stat. 634; 26 U. S. C. 5194)

§ 225.749 *Label to be attached.* When distilled spirits are shipped in bond in a tank car or tank truck, to noncontiguous premises, a label, dated and signed by the storekeeper-gauger, showing that the spirits are shipped in bond and giving the name, registry number, and location (city or town and State) of both the shipping and receiving premises, shall be securely attached to the route board where it may be readily examined by internal revenue officers. The label must be of good quality paper and be protected from damage by a coating of transparent shellac or similar transparent protective material. The label will be attached by the warehouseman under the supervision of the internal revenue officer. The label, which will be furnished by the shipper, will be in substantially the following form:

Shipped in Bond by
JOHN DOE COMPANY
I. R. B. W. No. 55, Boston, Mass.
To
NEW YORK WAREHOUSE COMPANY
I. R. B. W. No. 81, Brooklyn, N. Y.

(Date) (Storekeeper-gauger)

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.750 *Storekeeper-gauger's certificate of removal.* Upon removal of the spirits, the storekeeper-gauger will execute his report of inspection or gauge and removal on the six copies of Form 236, and if the spirits are contained in a conveyance sealed with Government cap seals he will note on Form 236 the serial numbers of the cap seals used. The storekeeper-gauger will retain one

copy of Forms 236 and 1520, 1619, or 1620, as the case may be, furnish one copy of each form to the proprietor of the shipping warehouse, forward one copy of each form to the assistant regional commissioner and forward three copies of each form to the storekeeper-gauger of the receiving warehouse. Where shipment is made by truck or tank truck, the three copies each of Forms 236 and 1520, 1619, or 1620, for the storekeeper-gauger at the receiving warehouse, will be sealed in an envelope addressed to such storekeeper-gauger and handed to the person in charge of the truck or tank truck for delivery to him.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.751 *Storekeeper-gauger's receipt of spirits at warehouse.* Upon receipt of the spirits at the receiving warehouse, the storekeeper-gauger will examine the shipment and will ascertain and note on Form 1520, 1619, or 1620, as the case may be, losses or discrepancies, as provided in §§ 225.381, 225.382, and 225.384. The storekeeper-gauger will weigh (and proof) the spirits as provided in § 225.380. The storekeeper-gauger will execute his certificate of receipt on each copy of Form 236 and if the spirits are contained in a conveyance sealed with Government cap seals indicate thereon whether the conveyance was received with seals intact. He will retain one copy each of Forms 236 and 1520, 1619, or 1620, give one copy of each form to the proprietor of the warehouse and forward one copy of each form to the assistant regional commissioner. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the three copies of Form 236 and the three copies of Form 1520, 1619, or 1620, as the case may be, have been received by the storekeeper-gauger. The storekeeper-gauger will include on Form 1513 the original tax gallons contained in all packages received regardless of any losses in transit. However, any package lost in transit will not be included on Form 1513 but will be entered by the assistant regional commissioner in his account of losses, Form 1691.

(68A Stat. 604, 647; 26 U. S. C. 5011, 5246)

TRANSFERS IN BOND BETWEEN INTERNAL REVENUE BONDED WAREHOUSES IN DIFFERENT REGIONS

§ 225.752 *Application, Form 236.* Where the transfer is to be made between bonded warehouses in different regions, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car or other vehicle, and the type of conveyance. If the applicant desires to receive packages of spirits without weighing such packages at time of receipt he should indicate on part 1 of Form 236 that the packages are to be transferred in sealed conveyances by entering the phrase "Government-sealed conveyance." The name of the carrier

shall not be specified on Form 236. The applicant shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.753 *Certificate of sufficiency of bond.* Upon receipt of Form 236 by the storekeeper-gauger in charge, he will compare the penal sum of the bond as stated in the application with his record furnished by the assistant regional commissioner pursuant to § 225.314. If the warehouse bond is given in the maximum penal sum of \$200,000, he will certify to the sufficiency thereof on Form 236, and return all seven copies of the form to the proprietor of the warehouse. If the warehouse bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all seven copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. The proprietor will forward all seven copies of the approved Form 236 to the proprietor of the consignor-warehouse. The proprietor of the consignee-warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor-warehouseman and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the consignee-warehouse.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.754 *Transfers in packages, cases, tank cars and tank trucks.* Spirits in original packages, or in packages filled from warehouse storage tanks, will be transferred in accordance with the provisions of § 225.735. Spirits in cases will be transferred in accordance with the provisions of § 225.736. Spirits in a previously filled tank car or tank truck will be transferred in accordance with the provisions of § 225.737. If spirits to be transferred are in storage tanks, they will be drawn into packages or into a tank car or tank truck and then transferred in accordance with the provisions of § 225.738. Forms 236 and 1520, 1619, or 1620 will be disposed of in accordance with § 225.755.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.755 *Storekeeper-gauger's certificate of removal.* Upon removal of the spirits, the storekeeper-gauger will execute his report of inspection or gauge and removal on the seven copies of Form 236, and if the spirits are contained in a conveyance sealed with Government cap seals he will note on Form 236 the serial

numbers of the cap seals used. The storekeeper-gauger will retain one copy of Forms 236 and 1520, 1619, or 1620, as the case may be, furnish one copy of such forms to the proprietor at the shipping warehouse, forward one copy of each form to the assistant regional commissioner-consignor, and forward four copies of Form 236 and three copies of Form 1520, 1619, or 1620 to the storekeeper-gauger of the receiving warehouse. Where shipment is made by truck or tank truck, four copies of Form 236 and three copies of Form 1520, 1619, or 1620 for the storekeeper-gauger at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger and handed to the person in charge of the truck or tank truck for delivery to him.

(68A Stat. 647; 26 U. S. C. 5246)

§ 225.756 *Storekeeper-gauger's receipt of spirits at receiving warehouse.* Upon receipt of the spirits at the receiving warehouse, the storekeeper-gauger will examine the shipment and will ascertain and note on Form 1520, 1619, or 1620, as the case may be, any losses or discrepancies, as provided in §§ 225.381, 225.382 and 225.384. The storekeeper-gauger will weigh (and proof) the spirits as provided in § 225.380. The storekeeper-gauger will execute his certificate of receipt on each copy of Form 236, and if the spirits are contained in a conveyance sealed with Government cap seals indicate thereon whether the conveyance was received with seals intact. He will retain one copy each of Forms 236 and 1520, 1619, or 1620, give one copy of each form to the proprietor of the warehouse, and forward two copies of Form 236, one copy of Form 1520, 1619, or 1620, as the case may be, to the assistant regional commissioner of his region. The assistant regional commissioner will retain one copy of Form 236 and the copy of Form 1520, 1619, or 1620 and forward the remaining copy of Form 236 to the assistant regional commissioner of the region from which the spirits were transferred. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the four copies of Form 236 and the three copies of Form 1520, 1619, or 1620, as the case may be, have been received by the storekeeper-gauger in charge. The storekeeper-gauger will include on Form 1513 the original tax gallons contained in all packages received regardless of any losses in transit. However, any package lost in transit will not be included on Form 1513 but will be entered by the assistant regional commissioner-consignee in his account of losses, Form 1691.

(68A Stat. 604, 647; 26 U. S. C. 5011, 5246)

SUBPART FF—TRANSFERS FOR REDISTILLATION

§ 225.770 *General.* Distilled spirits of any proof may be transferred in approved containers from an internal revenue bonded warehouse to any distillery for redistillation: *Provided,* That distilled spirits produced from material other than fruits or their residues may not be transferred to fruit distilleries for redistillation. The pipeline used for con-

veyance of spirits for redistillation shall be constructed and protected in accordance with the requirements of § 225.124 and approved for that purpose. Spirits for redistillation may be removed only pursuant to an approved application filed by the distiller in accordance with Part 220 of this title. Upon removal of spirits from an internal revenue bonded warehouse for redistillation, the consignee distiller shall assume the liability for all taxes and liens in respect of such spirits from the time they leave the warehouse premises; and, upon redistillation, the redistilled spirits shall be treated the same as if they were originally produced by the redistiller and all prior obligations as to taxes and liens thereon shall be superseded. The removal of spirits for redistillation shall be made in accordance with the provisions of this subpart.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.771 *Gauge of spirits to be removed for redistillation.* Upon receipt of application, Form 236, and the copy of the special application authorizing the removal, the warehouseman, when he desires to make shipment will give a copy of Form 236 to the storekeeper-gauger and furnish him with a complete description of the spirits to be shipped. The storekeeper-gauger will verify the information shown on Form 236 with the corresponding information shown on the application. He will make the inspection and gauge of containers or the bulk gauge for removal by pipeline or in tank cars or tank trucks, as the case may be. If the spirits to be removed for redistillation are in packages the proprietor will prepare Form 1520 in the manner provided in § 225.601. Otherwise the report of gauge will be prepared by the storekeeper-gauger. An original and five copies of Form 1520 will be prepared. Where the inspection or gauge discloses containers bearing evidence of unusual loss of contents that is not satisfactorily explained, or of tampering, the storekeeper-gauger shall immediately notify the assistant regional commissioner of all facts in the case and will detain the containers and contents thereof pending receipt of instructions from the assistant regional commissioner. The marking of containers and distribution of applications and gauge reports will be made, in accordance with the applicable provisions of §§ 225.730 to 225.756. A copy of the gauge report will be attached to each copy of Form 236. Containers of spirits removed from the warehouse for redistillation must have the required transfer-in-bond markings stenciled thereon, and, in addition, the words "For Redistillation." The storekeeper-gauger will note on all gauge reports covering removal of spirits for redistillation the proof at which the spirits were distilled and the words, "For Redistillation," followed by the serial number and date of approval of the special application authorizing such removal. Spirits may not be removed for redistillation until the proper authorization has been received at the consignor premises and exhibited to the storekeeper-gauger in charge.

(68A Stat. 634, 26 U. S. C. 5194)

§ 225.772 *Records.* Spirits removed from an internal revenue bonded warehouse for redistillation shall be reported and accounted for by the proprietor in accordance with subpart VV of this part and by the storekeeper-gauger in accordance with Subparts TT and UU of this part.

(68A Stat. 634; 26 U. S. C. 5194)

SUBPART GG—EXPORTATION OF DISTILLED SPIRITS FREE OF TAX

§ 225.780 *General.* Distilled spirits may be withdrawn from an internal revenue bonded warehouse, free of tax, for exportation as provided in this subpart. Distilled spirits may be so withdrawn under a direct export bond, in which case the exporter must furnish to the assistant regional commissioner evidence of the exportation of the spirits to a foreign country or proof of loss of the spirits at sea. Distilled spirits may also be withdrawn for exportation under a transportation bond covering the transfer of the spirits from the internal revenue bonded warehouse to the port of export, in which case the exporter must file with the collector of customs at the port of export bond, Form 693, in a penal sum equal to the internal revenue tax on the spirits to be exported, and proof of exportation of the spirits in accordance with customs regulations. In both cases a certificate showing the actual clearance of the spirits from the port of export will be furnished to the assistant regional commissioner by the collector of customs.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.781 *Kinds of containers.* Distilled spirits may be removed in bond, free of tax, for export in (a) distiller's original packages, including those the contents of which have been reduced in proof to not less than 90 degrees; (b) such packages as the warehouseman desires to export filled from distiller's original packages; (c) cases, when bottled in bond for export under the provisions of subparts MM-PP of this part; (d) wooden packages each containing two or more metallic cans of a capacity not less than 5 gallons each; (e) in tank cars, in the case of spirits transferred from the distillery to warehouse storage tanks for that purpose; and (f) in packages containing brandies blended under this part.

(68A Stat. 606, 633, 645, 647; 26 U. S. C. 5023, 5193, 5243, 5247)

§ 225.782 *Mingling in gauging tank of spirits intended for exportation.* Only spirits which conform to the limitations stated in § 225.809 may be mingled in a warehouse gauging tank preparatory to removal for exportation.

(68A Stat. 616, 634, 647; 26 U. S. C. 5082, 5194, 5247)

DISTILLER'S ORIGINAL PACKAGES

§ 225.783 *Application and entry.* Whenever an owner desires to remove distilled spirits from an internal revenue bonded warehouse, either for direct exportation or for transportation for export, in distiller's original packages without reducing the proof of the spirits, or after the spirits have been reduced to not less than 90 degrees of proof, he

shall execute application on Form 206, in quintuplicate. All information required by the instructions printed on the form, or issued in respect thereto, and in this part, shall be furnished. Applications on Form 206 must be signed and verified in accordance with the instructions printed on the form.

(68A Stat. 647, 748, 749; 26 U. S. C. 5247, 6061, 6065)

§ 225.784 *Method of conveyance.* The conveyance to be used in transporting the spirits from the bonded warehouse to the port of export and the name of the carrier or carriers shall be shown in the application whenever possible. If the spirits are shipped on a through bill of lading and all carriers handling the spirits while in transit are not known, the name of the carrier to whom the spirits are to be delivered at the shipping warehouse must be shown.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.785 *Request for regauge.* After the application, Form 206, has been fully executed, the owner will deliver all copies to the proprietor of the warehouse who will execute his request for regauge of the spirits. The proprietor will prepare Form 1520, in quintuplicate, in the manner provided in § 225.601 and deliver all copies of Forms 206 and 1520 to the storekeeper-gauger in charge of the warehouse.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.786 *Inspection and regauge.* Upon receipt of the Form 1520 and the application the storekeeper-gauger, by reference to his records, will verify the entries in the heading on Form 1520 and details of entry gauge transcribed thereto and shall examine the application and request for regauge. If no discrepancies are found in Form 1520 and Form 206 has been fully executed, the storekeeper-gauger will (unless the packages are to be withdrawn on the original gauge as authorized in § 225.565) inspect and regauge the packages. Any package bearing evidence of unusual loss that cannot be satisfactorily explained, or of tampering, will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. When the Form 1520 has been completed by the storekeeper-gauger, he will execute his report on each copy of Form 206, and attach a copy of Form 1520 to each copy thereof. He will retain one copy of each form and deliver the remaining four copies of each form to the proprietor of the warehouse, unless the spirits are to be reduced in proof, in which event the forms will be retained by the storekeeper-gauger until the packages have been regauged after reduction.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.787 *Reduction in proof.* Upon request of the owner, distilled spirits contained in distiller's original packages may be reduced in proof to not less than 90 degrees for exportation, by the addition of pure water only, after the packages have been regauged as provided in § 225.786. The spirits will be reduced by the proprietor of the bonded warehouse

in the presence and under the supervision of the storekeeper-gauger. Only such addition of water may be made to the body of the spirits in any package as the natural wantage of the package at the time of withdrawal will allow, but in no case shall the spirits be reduced to less than 90 degrees of proof. No introduction of water will be permitted which would require the withdrawal of any portion of the contents of the packages either before or after reduction. Any transfer of spirits from one package to another for the purpose of reduction is forbidden.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.788 *Gauge after reduction.* After the spirits in the distiller's original packages have been reduced, the storekeeper-gauger will again gauge the packages and report the details thereof on Form 1520, in quintuplicate. Any unusual loss ascertained by the gauge after reduction must be satisfactorily explained by the proprietor and reported in accordance with the provisions of § 225.486. Each such report of gauge shall have noted thereon the statement "Gauge after reduction," and a copy thereof shall be attached to each copy of Form 206, in addition to the copy of Form 1520 covering the withdrawal gauge. After the spirits have been so reduced and gauged, the storekeeper-gauger will execute his report on all copies of Form 206, retain one copy with Form 1520 attached, and deliver the four remaining copies to the proprietor of the warehouse. The packages, after reduction, shall be marked as provided in § 225.798.

(68A Stat. 604, 647; 26 U. S. C. 5011, 5247)

§ 225.789 *Export stamps required.* Every package of distilled spirits intended for exportation must have an export stamp affixed thereto at the time of its removal from the bonded warehouse. Such stamps shall be procured (without charge) by the proprietor of the warehouse from the district director of internal revenue of the internal revenue district in which the warehouse is located.

(68A Stat. 603, 647; 26 U. S. C. 5009, 5247)

§ 225.790 *Action by district director.* The proprietor of the bonded warehouse will forward all copies of Form 206, with Form 1520 attached, to the district director who will issue the necessary number of export stamps and note the serial numbers of the export stamps on Form 1520. The district director will retain one copy each of Form 206 and 1520 and send three copies thereof, with the export stamps, to the proprietor of the warehouse.

(68A Stat. 603, 647; 26 U. S. C. 5009, 5247)

§ 225.791 *Application and bond to assistant regional commissioner.* The proprietor of the bonded warehouse shall forward to the assistant regional commissioner all copies of the receipted Form 206, with Forms 1520 attached, together with a proper bond, executed in accordance with §§ 225.190 to 225.201 and 225.792 to 225.796, except that when an approved continuing bond (Form 657 or

658), in a sufficient penal sum, is on file in assistant regional commissioner's office, applications covering exportations thereunder need not be accompanied by an export bond.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.792 *Export bonds.* Bonds covering the exportation of distilled spirits may be executed by the owner of the spirits in sufficient penal sums, on one of the forms described in §§ 225.793, 225.794, 225.795, or 225.796, as the case may be.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.793 *Direct export, Form 547.* If the bond is intended to cover a specific lot of spirits withdrawn for direct exportation, it shall be executed on Form 547, in triplicate. The penal sum of such bond shall be not less than the tax at the distilled spirits rate on the quantity of spirits contained in the packages to be withdrawn for exportation, as shown by the report of regauge.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.794 *Continuing bond, direct export, Form 657.* If distilled spirits are to be withdrawn for direct exportation from time to time on one bond, a continuing bond, Form 657, in triplicate, shall be filed. The penal sum of such bond shall be sufficient to cover the tax at the distilled spirits rate on the maximum quantity of distilled spirits that may remain unaccounted for at any one time, but in no case shall the penal sum be less than \$1,000. Distilled spirits withdrawn for exportation under direct export bonds shall remain unaccounted for until satisfactory proof of exportation is filed with the assistant regional commissioner, or until satisfactory proof of loss at sea without fault or neglect of the owner or shipper has been submitted in accordance with § 225.841, and claim for remission of the tax on the spirits so lost has been allowed.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.795 *Transportation for export, Form 548.* If the spirits are to be withdrawn for transportation for export and a bond is to be given only for the spirits regauged for that purpose, it shall be executed on Form 548, in triplicate. The penal sum of such bond shall be not less than the tax at the distilled spirits rate on the quantity of spirits regauged for exportation.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.796 *Continuing bond, transportation for export, Form 658.* If spirits are to be withdrawn for transportation for export from time to time on one transportation for export bond, a continuing bond, Form 658, in triplicate, shall be executed. The bond will be executed in a penal sum sufficient to cover the tax at the distilled spirits rate on the maximum quantity of distilled spirits that may remain unaccounted for at any time, but in no case shall the penal sum be less than \$1,000. Distilled spirits withdrawn for transportation for export shall remain unaccounted for until satisfactory proof of clearance of the spirits from the port of export is filed with the assistant regional commis-

sioner in accordance with §§ 225.828 or 225.829.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.797 *Approval of bond and application.* The assistant regional commissioner will examine the bond, and if it is properly executed as provided in subpart G of this part, and in a sufficient penal sum, computed as prescribed in §§ 225.793, 225.794, 225.795, or 225.796 as the case may be, he shall note his approval thereon and deliver one copy to the principal. If the owner and the proprietor of the warehouse have complied with the law and this part and the application is complete in all respects, the assistant regional commissioner shall execute his permit for removal and transportation of the spirits on all copies of Form 206 and forward them to the storekeeper-gauger in charge of the warehouse.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.798 *Marking, branding, and stamping casks.* Upon receipt by the storekeeper-gauger of Form 206 with the permit executed by the assistant regional commissioner, the proprietor shall deliver the export stamps to the storekeeper-gauger who shall verify the data thereon with his retained copy of Form 1520, and, if no discrepancies are found, he will affix his signature, or the facsimile thereof, to the stamps and return them to the proprietor who shall proceed to affix and cancel them in the manner provided for the affixing and canceling of wholesale liquor dealer's stamps. The proprietor will cut or brand into the Government head of each package withdrawn for export, in letters and figures not less than one-half inch in height, the date of withdrawal, the proof and tare ascertained at time of withdrawal, the number of the export stamp, and the proof gallon contents as then ascertained. When spirits are withdrawn from a warehouse other than that in which originally deposited, the number of the warehouse and the State in which located will be cut, burned, or stenciled on the head of the package in addition to the original marks placed on the package. The names of the ports from and to which the spirits are to be exported will be marked on the heads of the packages. Where metal packages are used, all of the foregoing marks will be plainly and durably stenciled on the Government head. Such cutting, marking, or branding of export marks on the head will be as follows:

EXPORT

Withdrawn Oct. 30, 1934

I. R. B. W. 4 N. Y.

P. G. T. -----

P. G. -----

Export Stamp No. 600

[STAMP]

From Brooklyn, N. Y.

To London, England

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.799 *Release of spirits.* After the packages have been properly stamped, marked, and branded, the storekeeper-gauger will release them for delivery to the exporter named in the application. Upon removal of the spirits, the store-

keeper-gauger will execute his report of removal on Form 206.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.800 *Delivery to carrier.* If the spirits are withdrawn from a bonded warehouse located elsewhere than at the port of exportation, the exporter will deliver the shipment to a carrier for transportation to the port of exportation. He shall procure a copy of the bill of lading covering such transportation and deliver it to the storekeeper-gauger at the bonded warehouse. The spirits must be consigned to the collector of customs of the port of export, and must be properly described in the bill of lading by serial numbers, kind, and quantity.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.801 *Delivery directly for customs inspection.* Where the spirits are withdrawn from a bonded warehouse located at the port of exportation, the exporter will deliver the shipment directly for customs inspection and supervision of lading. A copy of the export bill of lading shall be procured and filed with the assistant regional commissioner for attachment to the copy of Form 206 retained by him.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.802 *Exportation through border port, etc.* In case of exportation through a border port to contiguous foreign territory, the bill of lading will cover the transportation of the spirits to their destination, and must show the routing, particularly as to the carrier which will deliver the shipment for customs inspection at the border. The shipment must be consigned in care of the collector of customs or deputy collector of customs at the border port. The exporter shall deliver one copy of the bill of lading to the storekeeper-gauger at the bonded warehouse. In case of transportation of the spirits from a bonded warehouse, located elsewhere than at the port of exportation, for shipment by vessel, the exporter shall furnish a copy of the transportation bill of lading and a copy of the export bill of lading to the assistant regional commissioner for attachment to the copy of Form 206 retained by him.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.803 *Disposition of forms.* When the packages have been delivered and the exporter has furnished a copy of the bill of lading, the storekeeper-gauger will forward immediately a complete set of the forms (206, 1520, and bill of lading) to the assistant regional commissioner, forward one copy each of Forms 206 and 1520 to the collector of customs at the port of exportation, and deliver one copy each of Forms 206 and 1520 to the proprietor for transmittal to the exporter. The exporter will execute his request for customs inspection on Form 206 and file such form with Form 1520 attached with the collector of customs at the port of exportation.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.804 *Records.* Packages removed from an internal revenue bonded warehouse for exportation shall be reported and accounted for by the proprietor in accordance with Subpart VV of this part

and by the storekeeper-gauger in accordance with Subparts TT and UU of this part.

(68A Stat. 644; 26 U. S. C. 5241)

PACKAGES FILLED FROM DISTILLER'S ORIGINAL PACKAGES

§ 225.805 *Application and entry.* Whenever an owner desires to transfer distilled spirits from distiller's original packages to such other suitable packages as may be desired for exportation, he shall execute application on Form 206, in quintuplicate, as provided in § 225.783.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.806 *Request for regauge.* After the application has been fully executed on Form 206, the proprietor will follow the procedure in § 225.785 prescribed for the withdrawal for exportation in distiller's original packages.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.807 *Inspection.* The storekeeper-gauger will examine the application and inspect the packages. Packages which do not bear evidence of unusual loss that cannot be satisfactorily explained, or of tampering, will be released for consolidation or change of package. A gauge tank may be used in consolidating or changing packages for export. Where it is determined that any package bears evidence of unusual loss that cannot be explained, or of tampering, such package will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495.

(68A Stat. 604, 647; 26 U. S. C. 5011, 5247)

§ 225.808 *Change of package.* Distilled spirits in distiller's original packages may be transferred from one package to one or more packages, or the contents, or portions of the contents, of two or more packages may be transferred to one package. The proprietor of the warehouse must so arrange the contents of the packages that no residue of spirits will be left in any of the distiller's original packages from which the contents are transferred. The transfer shall be made by the proprietor under the supervision of the storekeeper-gauger.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.809 *Mixing of spirits.* The contents of two or more original packages may not be transferred to another package unless the contents of the old packages are of the same kind, and were produced at approximately the same proof by the same distiller at the same distillery on or about the same date and stored in the same kind of cooperage under the same conditions.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.810 *Packages to be gauged.* After the transfer of the spirits to other suitable packages has been completed, the storekeeper-gauger will gauge such packages. The details of the gauge will be entered on Form 1520, in quintuplicate. The notation "Filled for export from Packages Nos. _____" (the serial numbers of the original packages being inserted), shall be made on all copies of

Form 1520 to distinguish such form from the Form 1520 prepared by the proprietor. A copy of Form 1520, covering the gauge of such packages, will be attached to each copy of Form 206, in addition to the copy of Form 1520 prepared by the proprietor.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.811 *Rinsing of packages and obliteration of marks and brands.* When the old packages have been emptied, and are not to be used for consolidated packages, they will be thoroughly rinsed and all marks and brands promptly obliterated. Rinse water not used for reducing the proof of the spirits must be immediately destroyed in the presence of the storekeeper-gauger. If an old package is to be used for a consolidated package, all marks and brands that will not apply to the spirits in the new consolidated package shall be obliterated. Where the original contents or a portion thereof is allowed to remain in the package, such retention is regarded as a constructive transfer of spirits from the old package to the new package.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.812 *Marks on new packages.* The new packages shall be marked and branded in accordance with § 225.409 and numbered in accordance with § 225.411.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.813 *Storekeeper-gauger's report.* When the packages have been so marked and branded, the storekeeper-gauger shall execute his report on Form 206, retain one copy of the form, with Forms 1520 attached, and deliver the remaining copies to the proprietor of the warehouse.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.814 *Export stamps.* The proprietor of the warehouse will forward all copies of Form 206, with Forms 1520 attached, to the district director, for the necessary number of export stamps.

(68A Stat. 603, 647; 26 U. S. C. 5009, 5247)

§ 225.815 *Action by district director.* The district director will issue the necessary number of export stamps, and note the serial numbers of the export stamps on the Form 1520 covering the gauge of the new packages. The district director will retain one copy of each form (206 and 1520) and send three copies thereof, with the export stamps, to the proprietor of the warehouse, in accordance with § 225.790.

(68A Stat. 603, 647; 26 U. S. C. 5009, 5247)

§ 225.816 *Subsequent procedure.* The procedure for filing bond, the stamping, marking, and branding, and removal of the packages, the disposition of the forms, and the recording of the removal, will be the same as that prescribed in §§ 225.791 to 225.804, for distilled spirits to be exported in distiller's original packages.

(68A Stat. 647; 26 U. S. C. 5247)

EXPORTATION OF BOTTLED DISTILLED SPIRITS

§ 225.817 *Application and bond.* Whenever it is desired to withdraw

bottled distilled spirits from the storage portion of the bonded warehouse or from the bottling-in-bond department, either for direct exportation or for transportation for export, the owner shall execute application on Form 206, in quadruplicate, in accordance with § 225.783. The request for regauge will not be executed. The applicant shall forward all copies of Form 206 to the assistant regional commissioner, together with a properly executed export bond in a sufficient penal sum, computed as prescribed in §§ 225.793 to 225.796, except that the application need not be accompanied by a bond if the applicant has on file with the assistant regional commissioner an approved continuing bond (Form 657 or 658) in a sufficient penal sum.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.818 *Approval of bond and application.* The assistant regional commissioner will examine the bond and if it is properly executed and in a sufficient penal sum to cover the tax on the spirits contained in the cases, he shall note his approval thereon and deliver one copy to the principal. In cases where the exporter has on file a continuing bond executed on a prior date, under which the exportation is to be made, the assistant regional commissioner will determine whether such bond is of sufficient penal sum to cover the tax on the spirits specified in the application as well as any spirits previously removed for export thereunder and unaccounted for. If the owner and the proprietor of the warehouse have complied with the law and this part, the assistant regional commissioner shall execute his permit for removal and transportation of the spirits on all copies of Form 206 and forward them to the storekeeper-gauger in charge of the warehouse.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.819 *Removal of cases for exportation.* Upon receipt of Form 206, approved by the assistant regional commissioner, the storekeeper-gauger shall inspect the cases, and if they bear no evidence of unusual loss that cannot be satisfactorily explained, or of tampering, release the cases for exportation. Any case bearing evidence of unusual loss that cannot be satisfactorily explained, or of tampering, will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. Upon removal thereof from the bottling-in-bond department or from the storage portion of the warehouse, the storekeeper-gauger shall execute his report of removal on Form 206. The spirits, when released for exportation, must be consigned to the collector of customs at the port of exportation, and must be properly described in the bill of lading by serial numbers, kind, and quantity. The exporter shall deliver two copies of the bill of lading to the storekeeper-gauger. One copy of Form 206 will be retained by the storekeeper-gauger, one copy thereof with a copy of the bill of lading will be forwarded to the assistant regional commissioner, one copy with a copy of the bill of lading will be forwarded to the collector of customs at the port of exportation, and one

copy will be delivered to the proprietor for transmittal to the exporter. The exporter will execute his request for customs inspection on Form 206 and file such form with the collector of customs at the port of exportation.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.820 *Records.* Cases of distilled spirits removed from an internal revenue bonded warehouse for export shall be reported and accounted for by the proprietor in accordance with subpart VV of this part and by the storekeeper-gauger in accordance with subparts TT and UU of this part.

(68A Stat. 645; 26 U. S. C. 5243)

WOODEN PACKAGES CONTAINING METALLIC CANS

§ 225.821 *General.* Distilled spirits may be exported in wooden packages, each containing two or more metallic cans, which cans shall each have a capacity of not less than 5 gallons.

(68A Stat. 633; 26 U. S. C. 5193)

§ 225.822 *Exportation of packages containing metallic cans.* Application on Form 206 shall be made promptly by the owner of the spirits for the removal of the packages from the bonded warehouse for exportation. The procedure prescribed in this subpart covering the withdrawal of distiller's original packages shall be applicable to the withdrawal of packages containing metallic cans, except that no regauge will be made in the bonded warehouse prior to the removal of the packages for exportation, and for this reason the request for regauge on Form 206 need not be executed by the proprietor of the warehouse.

(68A Stat. 644, 647; 26 U. S. C. 5241, 5247)

PROCEEDINGS AT PORTS OF EXPORT

§ 225.823 *Notice to collector of customs of arrival of spirits for exportation.* When distilled spirits withdrawn for direct exportation or transportation for exportation arrive at the port of exportation, the exporter or his agent shall execute his request for customs inspection on the Form 206 delivered to him by the proprietor of the warehouse and file such copy together with the attached Form 1520, if any, with the collector of customs. If Form 206 is properly completed and accompanied by Form 1520, when required, the collector of customs shall execute his order, both on the copy of Form 206 received from the exporter and on the copy received from the storekeeper-gauger, directing an inspector of customs or other customs officer, or designated storekeeper-gauger as provided in §§ 225.825 and 225.826, to inspect the packages or cases described in Form 206 and Form 1520, if any, and to supervise the scalping and destruction of the export stamps on packages, as provided in § 225.825, and the lading of the spirits. Both copies of Form 206 and Form 1520, if any, shall be delivered to the designated officer. In the case of distilled spirits withdrawn for transportation for exportation the exporter shall file an export-entry on Form 691

with the collector of customs after the inspection and lading of the spirits.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.824 *Lighterage or drayage under supervision.* Immediately upon the arrival of the spirits at the port of exportation, the exporter or his agent shall notify the collector of the port in order that (a) lighterage and drayage may be done under the collector's supervision, (b) the spirits may be at once inspected and laden on board the vessel, and (c) they may be in continuous customs custody from the time they are delivered from the cars or other conveyances until they leave port on the foreign-bound vessel.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.825 *Bulk containers.* Distilled spirits in casks, or in cases containing metallic cans, shall be inspected by a customs officer. He shall make such inspection or gauge as is necessary to establish that the shipment corresponds with the description thereof on the Form 206 and the accompanying gauge report, Form 1520, if any. Customs officers shall examine the contents of such containers as are found broken, damaged, or tampered with or regarding which he is led to suspect do not contain the spirits originally packaged therein and shall make a special report thereon. The customs officer shall note on his report any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the entry. After having completed the inspection and after the spirits have been duly laden on board the exporting conveyance, the customs officer shall complete and sign his certificate of inspection and lading on each copy of Form 206. *Provided,* That where the spirits are laden at an interior customs port for transportation for exportation and the storekeeper-gauger has been authorized by the collector of customs at the interior customs port to supervise the lading for transportation and to affix customs seals to a closed conveyance, the storekeeper-gauger will supervise the scalping of the export stamps and execute the certificate of inspection and lading on each copy of Form 206. If the officer has reason to believe that the merchandise is not the same as that originally packaged in the containers he shall detain the spirits and notify the collector of customs who shall inform the assistant regional commissioner for the region in which the port is located in order that appropriate action may be taken. There shall be cut out of each export stamp that portion upon which is shown the serial number of the stamp, the date of issue, the name of the district director issuing the same, the serial number of the cask or package, the contents in proof gallons, and the name of the internal revenue storekeeper-gauger. The cut-out portions of the export stamps shall then be attached to one copy of Form 206 for delivery to the collector of customs. After the export stamps have been scalped, the portions thereof remaining on each cask or package shall be obliterated.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.826 *Bottled spirits.* A customs officer at the port of exportation will in every instance carefully inspect cases containing spirits for the purpose of ascertaining whether the cases bear evidence of tampering or have sustained losses in transit due to breakage: *Provided*, That where the spirits are laden at an interior customs port for transportation for exportation the storekeeper-gauger may be authorized by the collector of customs at the interior customs port to inspect and supervise the lading for transportation. The officer will report on Form 206 any cases as to which a discrepancy is found, giving the serial numbers of the cases, their original contents in proof gallons, and the nature of the discrepancy as to each case. When the officer has completed his inspection and report as prescribed above, the entire shipment may be laden without detention of the deficient cases, unless the circumstances indicate fraud, in which event such cases will be detained pending investigation by the assistant regional commissioner, to whom the detention should be immediately reported.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.827 *Return of inspection and lading.* After the spirits have been duly laden on board the exporting vessel, car, or truck the customs officer, or designated storekeeper-gauger shall execute his report on Form 206 and forward all copies to the collector of customs, together with Form 1520 and Form 696, if any.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.828 *Disposition of forms by collectors of customs.* Upon receipt of the duly executed forms, the collector of customs will execute his certificate on Form 206 and will forward the copy of such form bearing the cut-out portions of the export stamps and one copy of Form 1520 and Form 696, if any, to the assistant regional commissioner of the region in which is located the warehouse from which the spirits were removed for exportation.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.829 *Exportation in railroad cars or trucks from port of entry through another port.* Where distilled spirits are to be exported by rail, including tank cars, or in trucks, including tank trucks, through a frontier port and it is desired to avoid the delay of customs inspection at such port, the spirits may be entered for exportation at an interior customs port and inspected by a customs officer, or designated storekeeper-gauger as provided in §§ 225.825 and 225.826, at that port. The officer designated will supervise the loading of the spirits and seal the car or truck with customs seals and note the car number or license number of the truck, as the case may be, and the serial numbers of the customs seals, if numbered seals are used, in his report on both copies of Form 206 and forward the forms with Forms 1520 attached together with a copy of the bill of lading to be furnished by the exporter to the collector of customs. The collector will forward both copies of Forms 206 and 1520 to the customs officer at the frontier

port and retain the bill of lading and the cut-out portions of the export stamps, if any, pending return of Forms 206. If the customs officer at the frontier port finds upon arrival of the car or truck that the seals are intact and there is no evidence of tampering with the contents, he will execute his report on Form 206, and allow the car or truck to proceed to its destination without opening. The officer will then return both copies of the receipted Form 206 with Form 1520 attached to the collector of customs at the port of entry. If, however, the customs officer finds that the seals are not intact or there is evidence of tampering with the contents, he will open the car or truck, inspect and gauge the spirits, and make report of his gauge on Form 696, in duplicate. When the spirits are so inspected and gauged, the customs officer will append to each copy of Form 206 (with Form 1520 attached, if any) a copy of his gauge on Form 696 before forwarding the forms to the collector of customs at the port of entry. Upon receipt of Forms 206 and Forms 1520 and 696, if any, from the customs officer at the frontier port, the collector at the port of entry will execute his certificate on both copies of Form 206, properly modified, and forward one copy of each form and the cut-out portions of export stamps from package (if any) to the assistant regional commissioner of the region from which the spirits were withdrawn from the warehouse.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.830 *Subsequent procedure.* Where distilled spirits are withdrawn and shipped under an export bond, the requirements of §§ 225.831-225.837 must be observed insofar as applicable. Where the spirits are withdrawn under a transportation for export bond, the exporter must file with the collector of customs bond on Form 693 and proof of exportation of the spirits.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.831 *Proof of exportation.* Exportation may be evidenced by (a) a copy of the export bill of lading issued by the exporting carrier, or (b) a certificate by the agent or representative of the export carrier showing actual exportation of the article, or (c) a certificate of landing when the spirits are not inspected prior to exportation or whenever the assistant regional commissioner shall have reason to believe that the shipment is not a bona fide exportation.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.832 *Proof of landing.* When the spirits are not inspected prior to exportation or whenever required by the assistant regional commissioner an owner exporting distilled spirits, free of tax, under an export bond shall file with the assistant regional commissioner, within six (6) months from the date of exportation, or such additional time as may be granted under § 225.837 evidence satisfactory to the assistant regional commissioner that the distilled spirits described in the application for export have been landed at some port outside the jurisdiction of the United States.

The landing certificate must give such description as will readily identify the spirits to which it relates.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.833 *Form of landing certificate.* The landing certificate shall be in substantially the following form:

Port of _____ 19____
I, _____, do hereby certify that the merchandise hereinafter described, shipped by _____ at the port of _____, on board the _____, on or about the _____ day of _____, 19____, has been landed at this port from on board the _____ on or about the _____ day of _____, 19____.

Number and kind of containers	Serial numbers	Kind of spirits	Quantity (proof gallons)

[SEAL]
Subscribed and sworn to before me this _____ day of _____, 19____.

[SEAL] _____ (Name)
_____, (Title)

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.834 *Execution of landing certificate.* The landing certificate shall be signed by a revenue officer of the foreign country to which the spirits are exported, unless it is shown that such country has no customs administration, in which event the certificate shall be signed by the consignee or by the vessel's agent at the place of landing and sworn to before a notary public or other officer authorized to administer oaths and having an official seal. Where the certificate offered is in a foreign language, a sworn translation must accompany the certificate.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.835 *Landing certificate may cover several consignments.* Where several consignments are made by the same shipper to the same consignee, or to a general agent, on the same date, by the same vessel or other conveyance, and to the same foreign port, such consignments may be covered by one landing certificate, provided each consignment is specifically and separately described in the certificate.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.836 *Collateral evidence of landing.* Whenever an owner is unable to procure a landing certificate but is able to establish by collateral evidence the actual exportation of the spirits and their delivery to the foreign consignee, he may file application for relief with the assistant regional commissioner holding the export bond. Such application must be under oath and must recite the facts connected with the exportation, the date of withdrawal of the spirits from the internal revenue bonded warehouse for exportation, the name and registry number of the internal revenue bonded warehouse from which withdrawn, the name and registry number of the producing distiller, the serial numbers of the packages or cases, the kind and quantity of spirits, the name of the consignee, and

the name of the vessel by and the port to which shipment was made. The application must set forth the reason why a landing certificate cannot be filed and must be supported by such collateral evidence of exportation and delivery to the foreign consignee as the exporter may be able to submit. The application must be submitted to the assistant regional commissioner before the expiration of the time specified in § 225.832 for furnishing evidence of landing.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.837 *Extension of time for submitting proof of landing.* In case the owner, from causes beyond his control, is unable to furnish the required proof of landing within six months from the date of exportation, he may make application to the assistant regional commissioner for an extension of time for the production of such evidence. Such application must state specifically the cause of failure to produce the evidence and be verified under oath. An extension of three months may be granted by the assistant regional commissioner, and, if necessary, upon a second application an additional three months may be granted.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.838 *Account with export bonds, Forms 657, 658, 547, and 548.* The assistant regional commissioner will keep an account on Form 1688, with each continuing export bond on Form 657 or Form 658 and with each specific export bond on Form 547 or Form 548. The account shall show all of the information as indicated in the heading and by the various columns and as required by instructions issued in respect thereto and by this part.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

LOSSES

§ 225.839 *Loss at sea.* When proof of landing is required, the bond required to be given for the exportation of distilled spirits shall be canceled or credited, as the case may be, upon presentation of satisfactory proof that, after shipment, the spirits were lost at sea without fault or neglect of the owner or shipper thereof.

§ 225.840 *Action by assistant regional commissioner.* If, upon examination of Forms 206, 696, if any, and 1520 received from the collector of customs, a loss in transit is disclosed, the assistant regional commissioner will follow the procedure prescribed by §§ 225.-480 to 225.495 insofar as applicable.

(68A Stat. 604, 647; 26 U. S. C. 5011, 5247)

§ 225.841 *Proof of loss at sea.* When the exporter is unable to furnish proof of landing at a foreign port in consequence of loss at sea, he shall file with the assistant regional commissioner with whom he filed the export bond, an application for relief, setting forth fully the cause and extent of the loss, and all the facts and circumstances surrounding the same. Such application must be accompanied by the affidavits of two or more creditable and disinterested persons as to the loss. If the spirits were insured, the exporter shall also file certificates by officers of the insurance com-

pany, or board of underwriters, stating whether the insurance has been paid, and, whether to the best of their knowledge and belief the spirits were actually destroyed at sea. When obtainable, affidavits must be furnished by the master and mate of the vessel, detailing the cause and extent of the loss and all of the facts and circumstances surrounding the same. Such proof shall be furnished to the assistant regional commissioner within the time specified in § 225.832 for furnishing proof of landing of the spirits in a foreign country.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

§ 225.842 *Filing proof of loss at sea in case of exportation under bond on Form 693.* Where the spirits are exported under a bond furnished on Form 693 and the exporter is unable to furnish the required proof of landing at a foreign port in consequence of loss at sea, he will file application for relief and supporting evidence conforming to the provisions of § 225.841 with the collector of customs with whom the bond was filed. The collector of customs will forward the application and supporting evidence to the Commissioner of Customs, with his recommendation thereon.

(68A Stat. 604, 647; 26 U. S. C. 5011, 5247)

EXPORTATION IN TANK CARS

§ 225.843 *Kind of spirits.* Distilled spirits intended for exportation, free of tax, may be drawn from storage tanks in any internal revenue warehouse, for transfer to tank cars for exportation.

(68A Stat. 647; 26 U. S. C. 5247)

§ 225.844 *Procedure applicable.* Where it is desired to export distilled spirits in tank cars pursuant to the above provisions of law, the procedure relating to the exportation of distilled spirits in distiller's original packages, in so far as applicable, shall apply. The tank cars must be so constructed that all openings may be securely closed and sealed. An export stamp shall be procured and affixed to the route board of each tank car of spirits intended for exportation in the same manner as an export stamp is affixed to a package of spirits to be exported, and upon inspection of the tank car at the port of exportation such stamp shall be scalped and disposed of in accordance with § 225.825.

(68A Stat. 647; 26 U. S. C. 5247)

GENERAL PROVISIONS

§ 225.845 *Certificate of origin.* In view of the fact that entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and age of such spirits, assistant regional commissioners with whom export withdrawal entries are filed may, in such cases, furnish the exporter with a certificate showing the origin and age of the spirits described in the entry for withdrawal, so far as may be determined from the marks and brands on the packages or cases containing the spirits. Such certificates shall be furnished in typewritten form on official letterheads.

§ 225.846 *Shipment to American possessions.* The provisions of this subpart relating to the exportation of distilled spirits, free of tax, to foreign countries and the forms prescribed for use in connection therewith, shall apply to like removals and shipments to Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Panama Canal Zone. Distilled spirits shipped to other possessions of the United States, and to Hawaii and Alaska, must be taxpaid before withdrawal from bonded warehouses, unless transferred in bond to an internal revenue bonded warehouse located in one of these territories or possessions.

(68A Stat. 608; 26 U. S. C. 7653)

§ 225.847 *Exportation of spirits after expiration of bonded period not permitted.* Except as to spirits which were 8 years of age, or older, on July 26, 1936, and remain in warehouse, assistant regional commissioners will decline to approve applications for the exportation of distilled spirits which have remained in warehouse after the expiration of the 8-year bonded period prescribed by law. In such cases, the assistant regional commissioner will indorse his disapproval across the face of the application and return the disapproved application, together with the bond, to the owner. At the same time the assistant regional commissioner will inform the proprietor of the warehouse in which the spirits are stored that the bonded period has expired and demand the immediate tax-payment and withdrawal of the spirits.

(68A Stat. 599; 26 U. S. C. 5006)

§ 225.848 *Delay in lading at port.* If the exporting vessel is not prepared to receive distilled spirits withdrawn for export upon arrival at the port of exportation, the collector of customs may permit such spirits to remain in possession of the carrier for a period not exceeding 15 days. Storage elsewhere for a like cause, and not exceeding the same period, may be approved by the collector of customs. In the event of further delay, the facts will be reported to the Director, Alcohol and Tobacco Tax Division, who will issue appropriate instructions concerning the disposition of the spirits.

(68A Stat. 645, 647; 26 U. S. C. 5243, 5247)

SUBPART HH—SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT

§ 225.860 *General.* Distilled spirits in packages and in cases which have been bottled in bond for exportation may be withdrawn from internal revenue bonded warehouses free of tax for use as supplies on vessels and aircraft as follows:

(a) Vessels or aircraft operated by the United States;

(b) Vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(c) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions;

(d) Vessels of war of any foreign nation;

(e) Foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign vessels is permitted; or

(f) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found such foreign country allows, or will allow, substantial reciprocal privileges in respect to aircraft registered in the United States.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.861 *Reciprocating foreign countries.* The Director, Alcohol and Tobacco Tax Division, will advise assistant regional commissioners concerning those foreign countries which will allow, to aircraft registered in the United States and engaged in foreign trade, privileges substantially reciprocal to the privileges allowed herein to aircraft of a foreign country. Assistant regional commissioners may approve applications to withdraw distilled spirits for use on aircraft of such countries. Where application is made to withdraw distilled spirits free of tax for use on aircraft of other foreign countries, which it is claimed reciprocate similar privileges to aircraft of the United States, the applicant must first establish the right of such withdrawal. In appropriate cases, the applicant should request the Secretary of Commerce to find and advise the Secretary of the Treasury that such foreign country or countries allow, or will allow, substantially reciprocal privileges to aircraft of the United States.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.862 *Procedure.* Application to remove distilled spirits in packages and in cases bottled in bond for exportation from internal revenue bonded warehouses for use as supplies on vessels or aircraft will be made on Form 206. The procedure prescribed in §§ 225.783 to 225.816 as it relates to the withdrawal of packages from internal revenue bonded warehouses for exportation, is hereby made applicable to the withdrawal of packages for use as supplies on vessels or aircraft. The procedure prescribed in §§ 225.817 to 225.819 relating to the transfer and withdrawal of spirits bottled in bond for exportation, is hereby made applicable to the transfer and withdrawal of bottled spirits free of tax for use as supplies on vessels or aircraft.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.863 *Bond.* Distilled spirits which are to be withdrawn from internal revenue bonded warehouses free of tax for use as supplies on vessels or aircraft must be covered by a bond on Form 547 or Form 657. Such bonds will be executed in the same manner as bonds for distilled spirits withdrawn free of tax for exportation, but must be accompanied by consent of surety, Form 1533, specifically stipulating that the terms

thereof will cover distilled spirits withdrawn for use as supplies on vessels or aircraft. Exporters who have on file bonds on Form 657 covering the exportation of distilled spirits, and who desire to withdraw spirits free of tax from an internal revenue bonded warehouse for use as supplies on vessels or aircraft, may file a consent of surety containing a similar stipulation, provided such bonds are of sufficient penal sum.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.864 *Export entry.* Before the spirits may be laden on the vessel or aircraft, the owner must file Form 206 with the collector of customs. The provisions of §§ 225.823, 225.824, and 225.826 to 225.828 will be observed insofar as applicable.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.865 *Evidence of lading for use.* If the distilled spirits were laden on board a vessel or aircraft for use as ship's supplies or supplies for aircraft, there must be submitted to the assistant regional commissioner a statement of the master or other officer of the vessel or aircraft on which the spirits were laden, having knowledge of the facts, showing that the spirits have been laden and will be used on board the vessel or aircraft, and that no portion thereof has been or will be unladen in the United States or any of its territories or possessions: *Provided,* That such statement will not be required, in the case of any shipment, when the distilled spirits are laden on vessels of war, or where the amount of tax on the distilled spirits does not exceed \$100. Such statement shall be signed by the master or other officer having knowledge of the facts and immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct."

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.866 *Account with bond, Form 547 or Form 657.* The assistant regional commissioner will keep an account with each bond, Form 547 or Form 657, similar to that kept for distilled spirits exported free of tax. In cases where exportations free of tax and withdrawals free of tax for use as supplies on vessels or aircraft are made under the same bond, only one account covering both transactions need be kept. Upon receipt of a satisfactory statement (if required) the assistant regional commissioner will enter proper credit in the export account. In the case of spirits laden on vessels of war, or in the case where the amount of tax on the spirits does not exceed \$100, credit will be given at the time of receipt of evidence of lading from the collector of customs as provided in § 225.823.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

§ 225.867 *Records.* Spirits withdrawn for use as supplies on vessels or aircraft shall be reported and accounted for by the proprietor in accordance with Subpart VV of this part and by the storekeeper-gauger in accordance with Subparts TT and UU of this part.

(46 Stat. 690 as amended; 19 U. S. C. 1309)

SUBPART II—TRANSFER OF DISTILLED SPIRITS TO CUSTOMS MANUFACTURING BONDED WAREHOUSES

§ 225.875 *General.* Any manufacturer who manufactures medicines, preparations, compositions, perfumeries, cosmetics, and cordials and other liquors, for exportation, at a duly constituted manufacturing bonded warehouse established in accordance with law, may withdraw distilled spirits in approved containers from any internal revenue bonded warehouse, free of tax, for use in the manufacture of such products. The law provides that distilled spirits may be removed from internal revenue bonded warehouses without payment of tax and transported to bonded manufacturing warehouses, class 6, to be rectified, or reduced in proof and bottled or packaged, and exported or shipped to Puerto Rico.

(68A Stat. 678, 679; 26 U. S. C. 5521, 5522, 5523)

§ 225.876 *Withdrawal.* When any manufacturer, who is the proprietor of a customs manufacturing bonded warehouse, desires to remove distilled spirits to such warehouse from an internal revenue bonded warehouse, free of tax, for use in the manufacture of medicines, preparations, compositions, perfumeries, cosmetics, and cordials and other liquors, for exportation, or, in the case of spirits rectified or reduced in proof and bottled or packaged, for exportation or shipment to Puerto Rico, he shall execute application, Form 206, in quintuplicate in accordance with the applicable provisions of § 225.783 indicating thereon that the spirits are to be withdrawn for transfer to a customs manufacturing warehouse and indicating the kind of container, i. e., distiller's original packages, packages to which the contents of original distiller's packages were transferred, in packages filled from warehouse tanks, in tank cars or tank trucks or by pipeline. The proprietor of the internal revenue bonded warehouse from which the spirits are to be removed shall execute request on Form 206 for regauge of the spirits covered by the application. The provisions of § 225.786, relating to the gauging of distiller's original packages for exportation, shall so far as applicable apply to the gauging of distilled spirits to be removed to customs manufacturing warehouses.

(68A Stat. 604, 679; 26 U. S. C. 5011, 5522)

§ 225.877 *Bond.* The manufacturer shall execute a bond to cover the transportation of the spirits from the internal revenue bonded warehouse from which withdrawn to the customs manufacturing bonded warehouse. If the bond is to cover a specific lot of spirits, it shall be executed on Form 643, in triplicate, and in a penal sum sufficient to cover the tax at the rate prescribed by law on the spirits to be so transported. If it is desired to furnish bond under which spirits may be withdrawn from time to time, it shall be executed on Form 1618, in triplicate, in a penal sum sufficient to cover the tax at the rate prescribed by law on the maximum quantity of spirits which may be outstanding against the bond at any one

time. The bond and the application, Form 206, with report of gauge, Form 1520, attached, will be forwarded to the assistant regional commissioner who will, upon approval, dispose of the bond and application as provided in § 225.797 in the case of the withdrawal of distilled spirits in distiller's original packages for exportation.

(68A Stat. 679; 26 U. S. C. 5522)

§ 225.878 *Account with bonds, Form 1618 and Form 643.* The assistant regional commissioner will keep an account on Form 1687, with each continuing bond on Form 1618 and with each specific bond on Form 643. The account shall show all information as indicated in the heading and by the various columns and as required by instructions issued in respect thereto and by this part.

(68A Stat. 604, 679; 26 U. S. C. 5011, 5522)

§ 225.879 *Stamps, marks, and brands; disposition of forms.* Packages must be stamped, marked, and branded in accordance with § 225.798 except that the name of the port to which the spirits are consigned for deposit in a manufacturing warehouse will be substituted for the names of the ports from and to which the spirits are to be exported. Export stamps will be affixed to the route boards of tank cars and tank trucks in the manner as provided in § 225.844 in the case of withdrawals of distilled spirits in tank cars for exportation. Export stamps are not required for transfers by pipeline. Forms will be disposed of in accordance with § 225.803.

(68A Stat. 639, 679; 26 U. S. C. 5212, 5522)

§ 225.880 *Consignment of spirits.* The spirits when withdrawn for shipment must in all cases be consigned to the proprietor of the manufacturing bonded warehouse, in care of the collector of customs of the district in which the warehouse is located.

(68A Stat. 679; 26 U. S. C. 5522)

§ 225.881 *Deposit in customs manufacturing warehouse.* Upon receipt of Forms 206 and 1520, the collector of customs will direct the proper officer to make such inspection or gauge as necessary to establish that the shipment corresponds with the description thereof on Forms 206 and 1520, and to supervise their deposit therein. Customs officers shall examine the contents of such containers as are found broken, damaged, or tampered with or regarding which he is led to suspect do not contain the spirits originally packaged therein and shall make a special report thereon. The customs officer shall note on his report any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the entry. After having completed the inspection the customs officer shall supervise the scalping of the export stamps (not applicable to pipeline transfers), execute his certificate on Customs Form 3923, in duplicate, and forward the forms and scalped stamps to the collector of customs, who will execute his certificate on Form 3923 and forward one copy of such form and one copy each of Form

206 with the scalped stamps and Form 1520 to the assistant regional commissioner of the region from which the spirits were received: *Provided*, That where the spirits are to be removed from an internal revenue bonded warehouse for deposit in a contiguous customs manufacturing bonded warehouse and the storekeeper-gauger has been authorized by the collector of customs to supervise the deposit, the storekeeper-gauger will supervise the scalping of the export stamps and execute the certificate of inspection and deposit. If the designated officer has reason to believe that the merchandise is not the same as that originally packaged in the containers he shall detain the spirits and notify the collector of customs who shall inform the assistant regional commissioner for the region in which the customs manufacturing bonded warehouse is located in order that appropriate action may be taken.

§ 225.882 *Action by assistant regional commissioner.* Upon receipt of Forms 3923, 696 (if any), 206, and 1520 from the collector of customs, the assistant regional commissioner will ascertain whether there has been a loss of spirits in transit. If such a loss of spirits has occurred, the assistant regional commissioner will follow the procedure prescribed in §§ 225.480-225.495, insofar as applicable. If there has been no loss of spirits in transit, the assistant regional commissioner will, if the spirits were withdrawn on a continuing bond on Form 1618, make appropriate entries on Form 1687, or, if the withdrawal was made under bond on Form 643, cancel such bond in accordance with the provisions of § 225.338 and make appropriate entries on Form 1687.

(68A Stat. 604, 679; 26 U. S. C. 5011, 5522)

SUBPART JJ—WITHDRAWAL OF DISTILLED SPIRITS FOR USE OF THE UNITED STATES

§ 225.890 *Persons entitled to make withdrawals.* Distilled spirits stored in internal revenue bonded warehouses and purchased for the use of the United States may be withdrawn, free of tax, by the head of the department, or the head of the bureau or establishment not under control of any department, for which the spirits are purchased.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.891 *Application, Form 543.* The head of the department or independent bureau or establishment, as the case may be, desiring to so withdraw such distilled spirits free of tax will file application on Form 543, signed by himself or another official duly authorized by him. Where the head of a department or independent bureau authorizes another officer to sign the application he will furnish the Director, Alcohol and Tobacco Tax Division, with a copy of the order authorizing such officer to sign, or other evidence of the authority conferred upon the officer. The application will be forwarded to the Director, Alcohol and Tobacco Tax Division.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.892 *Permit, Form 1508.* Upon receipt of the application, permit on

Form 1508, in quintuplicate, will be issued by the Director, Alcohol and Tobacco Tax Division, and the original and three copies will be forwarded to the Government official by whom the application was signed, who in turn shall detach a copy and forward the original and the two remaining copies to the contractor or warehouseman to whom the spirits are to be delivered for shipment to the designated Government official. Upon approval of the bond, Form 544, pursuant to the provisions of § 225.893, the warehouseman shall furnish the original and the two copies of the Form 1508 to the storekeeper-gauger at the warehouse.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.893 *Bond, Form 544.* The contractor or the warehouseman will file with the assistant regional commissioner a bond on Form 544, in triplicate, in a penal sum not less than the tax on the spirits to be withdrawn. Upon approval of the bond, the assistant regional commissioner will forward one copy to the principal.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.894 *Form 1520.* If the spirits to be withdrawn are in packages, the warehouseman will prepare an original and four copies of Form 1520 in the manner prescribed in § 225.601. The storekeeper-gauger at the warehouse will, upon presentation of the Form 1520 and the original and two copies of the permit, Form 1508, examine the packages and where it is determined that any package bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such packages will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. Packages which do not bear evidence of unusual loss or tampering will then be gauged.

(68A Stat. 604, 900; 26 U. S. C. 5011, 7510)

§ 225.895 *Form 1519.* If the spirits to be withdrawn were previously bottled in bond, the warehouseman will present the original and two copies of the permit, Form 1508, to the storekeeper-gauger together with an application on Form 1519, in quintuplicate, modified to indicate the type of withdrawal, executed by the principal on the bond Form 544, for withdrawal of the spirits. The storekeeper-gauger will inspect the cases and follow the procedure, insofar as applicable, prescribed by § 225.894. If any cases appear to have sustained a loss, the contents shall be examined and the quantity ascertained to have been lost from each case shall be noted on each copy of Form 1519.

(68A Stat. 604, 900; 26 U. S. C. 5011, 7510)

§ 225.896 *Forwarding of forms.* Upon completion of the regauge or inspection, the storekeeper-gauger will forward the original and two copies of the permit, Form 1508, and one copy of Form 1520 or 1519, as the case may be, direct to the assistant regional commissioner.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.897 *Assistant regional commissioner's order to deliver spirits.* If the

bond has been approved, the assistant regional commissioner, upon receipt of the original and two copies of the permit, Form 1508, and the copy of Form 1520 or 1519 from the storekeeper-gauger, will execute his order on Form 1508 directing the storekeeper-gauger to deliver the spirits to the person named in the order, and will forward all copies of the Form 1508 and Form 1520 or Form 1519 to the storekeeper-gauger; *Provided*, That where inspection of any package or case discloses evidence of tampering or unusual loss as provided in § 225.894 or § 225.895, the procedure prescribed in §§ 225.480 to 225.495 will be followed.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.898 *Delivery of spirits.* Upon receipt from the assistant regional commissioner of the original and two copies of the Form 1508 and Form 1520 or Form 1519 by the storekeeper-gauger, the spirits will be delivered as provided in the order of the assistant regional commissioner, after the containers have been properly marked. The proprietor will cut, brand, or stencil on the Government head of each package withdrawn for the use of the United States, in letters and figures not less than one-half inch in height, the proof and tare ascertained at the time of gauge for withdrawal, the date and purpose of withdrawal, the number of proof gallons as then ascertained, and the storekeeper-gauger's name, title, and region. Cases will have stenciled thereon the words "Use of U. S.," followed by the date of withdrawal. There will also be plainly marked on each package or case, by means of a stencil or securely affixed label, the name, title, and address of the Government official to whom the spirits are to be consigned. When delivery of the spirits has been made, the storekeeper-gauger will note over his signature on Form 1508, in the space provided therefor, the name of the person to whom the spirits were delivered and the date of delivery, and will retain one copy of the Form 1508 and one copy of Form 1520 or Form 1519, deliver one copy of each to the warehouseman, forward one copy of the Form 1520 or Form 1519 to the Government official to whom the spirits are to be delivered at destination, and forward the original of the permit, Form 1508 with Form 1520 or Form 1519 attached, to the assistant regional commissioner. If the bond was given by a person other than the warehouseman, a copy of Form 1520 or Form 1519 may be furnished to such person.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.899 *Bill of lading.* Where the spirits are transported from the warehouse by a carrier, the person to whom the spirits are delivered for shipment shall furnish a copy of the bill of lading covering transportation of the spirits from the point of shipment to final destination, to the storekeeper-gauger, who will forward the same to the assistant regional commissioner with Form 1508 and Form 1520 or Form 1519.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.900 *Certificate, Form 545.* Receipts of shipments of spirits withdrawn

for use of the United States under this subpart shall be promptly certified to on Form 545 by the official representative of the United States or Governmental agency thereof to whom deliveries of such shipments are made. Where inspection at destination discloses a loss in transit in excess of one proof gallon as to any package, such loss will be noted on Form 545 by the receiving officer who will also specify the serial number of each such package, the loss ascertained as to each, and whether the condition of the package when received indicated that the loss was due to theft, or to other cause. Similar notations will be made by the receiving official on Form 545 where inspection of shipments of spirits withdrawn in cases reveals any loss in transit.

(68A Stat. 900; 26 U. S. C. 7510)

§ 225.901 *Disposition of Form 545.* The certificate on Form 545 duly executed by the receiving officer to whom the spirits are delivered shall be forwarded within 30 days from the date of the withdrawal of the spirits to the assistant regional commissioner from whose region the withdrawal was made. If Form 545 shows a loss of spirits in transit, a claim for remission of the tax may be required in accordance with the provisions of § 225.482.

(68A Stat. 900; 26 U. S. C. 7510)

SUBPART KK—WITHDRAWAL OF WINE SPIRITS FOR USE IN WINE PRODUCTION

§ 225.910 *Kinds of spirits.* Wine spirits produced from the distilling material authorized for use in fruit distillery operations under section 5215, I. R. C., but which have not been reduced with water from distillation proof, nor distilled at less than 140 degrees proof and commercial brandy aged in wood for a period of not less than two years and barreled at not less than 100 degrees of proof may be withdrawn from internal revenue bonded warehouses for use in wine production within the limitations prescribed in part 240 of this title.

(68A Stat. 667; 26 U. S. C. 5373)

WITHDRAWAL IN PACKAGES

§ 225.911 *Application, Form 257.* Where it is desired to remove wine spirits in packages from an internal revenue bonded warehouse for use in wine production, application will be made by the proprietor of the bonded wine cellar on Form 257, and the application will be approved and forwarded to the warehouseman in accordance with the provisions set forth in part 240 of this title.

(68A Stat. 667; 26 U. S. C. 5373)

§ 225.912 *Gauge of wine spirits.* The proprietor, upon receipt of Form 257, will execute his description of the wine spirits to be gauged on all copies of the form and will, if the wine spirits to be removed are in previously filled packages, prepare Form 1520 in the manner prescribed in § 225.601. The proprietor will prepare five copies of the report of gauge, Form 1520, where the wine spirits are to be removed to a bonded wine cellar located in the same region, and six copies where the bonded wine cellar is located in another region. He

will refer the forms to the storekeeper-gauger assigned to the warehouse. Where no storekeeper-gauger is assigned to the warehouse, the proprietor will request the assistant regional commissioner to assign an officer to gauge and release the wine spirits. The storekeeper-gauger will, by reference to his records, verify the entries in the heading of Form 1520 and the details of the entry gauge transcribed thereto. The storekeeper-gauger will examine the packages and where it is determined that any package bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such package will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480-225.495. If the packages were previously filled, they will be regauged unless withdrawn on the original gauge as provided in § 225.565. The proprietor will cut, brand, or stencil on the Government head in letters and figures not less than one-half inch in height, the proof and tare ascertained at the time of withdrawal, the date of withdrawal, and where the bonded wine cellar is not contiguous, the words "For Use in Wine Production." He will attach one copy of Form 1520 to each copy of Form 257, except as provided in § 225.915, and will note on the extra copies of Form 1520 the name, registry number, and address of the bonded wine cellar to which the wine spirits are to be shipped. No greater quantity of wine spirits may be gauged or withdrawn than stated in the application. If the wine spirits to be removed are contained in storage tanks, the designated packages, after they have been filled and gauged, will be marked and branded in accordance with § 225.409 serially numbered in accordance with § 225.411, and in addition will have placed thereon the markings required in this section. In such cases, Form 1520 will be prepared and completed by the storekeeper-gauger.

(68A Stat. 667; 26 U. S. C. 5373)

§ 225.913 *Warehouse and bonded wine cellar on adjacent premises.* Where the warehouse and bonded wine cellar are located on adjacent premises, and Form 257 is filed for a single removal, the storekeeper-gauger at the warehouse will transmit all copies of Form 257, with Form 1520 attached, to the proprietor of the bonded wine cellar, who will execute the certificate of deposit on Form 257 and return one copy of the forms to the storekeeper-gauger for filing. The storekeeper-gauger will forward a copy of Form 1520 to the assistant regional commissioner and furnish the remaining copy to the warehouseman.

(68A Stat. 667; 26 U. S. C. 5373)

§ 225.914 *Warehouse and bonded wine cellar not on adjacent premises.* Where the warehouse and bonded wine cellar are not located on adjacent premises the storekeeper-gauger at the warehouse will, upon removal of the wine spirits, execute his certificate of gauge and removal on all copies of Form 257, retain one copy with a copy of Form 1520 attached, and immediately forward the remaining copies (two or three, as the case may be), with a copy of Form 1520 attached to each, to the proprietor of

the bonded wine cellar. The storekeeper-gauger will forward one copy of Form 1520 to the assistant regional commissioner and will deliver one copy of the form to the warehouseman.

(68A Stat. 667; 26 U. S. C. 5373)

§ 225.915 *Certificate of monthly deposits in adjacent bonded wine cellar.* If the warehouse and bonded wine cellar are located on adjacent premises and wine spirits are to be transferred to the bonded wine cellar from time to time during the month, the application on Form 257 may cover all wine spirits to be transferred to the bonded wine cellar during the month. On receipt of Form 257 from the warehouseman, the storekeeper-gauger will, at the time of the initial withdrawal, attach a copy of Form 1520 to each copy of Form 257, retain one copy, and deliver two copies to the proprietor of the bonded wine cellar. A copy of Form 1520 will be forwarded to the assistant regional commissioner and the remaining copy will be furnished to the warehouseman. On succeeding withdrawals the storekeeper-gauger will furnish two copies of Form 1520 to the proprietor of the bonded wine cellar, one to the warehouseman, forward a copy to the assistant regional commissioner and retain the remaining copy to be attached to Form 257. At the close of the month the storekeeper-gauger will execute part 5 and the proprietor of the bonded wine cellar will execute part 6 on all three copies of Form 257. The storekeeper-gauger will file one copy of Form 257 with Form 1520 attached at the warehouse as a permanent record.

(68A Stat. 667; 26 U. S. C. 5373)

WITHDRAWAL BY PIPELINE

§ 225.916 *Application, Form 257.* Where it is desired to transfer wine spirits by pipeline from warehouse tanks to bonded wine cellars on adjacent premises the procedure prescribed in §§ 225.911 to 225.915 for transfer in packages will be followed. Notation of transfer by pipeline will be made by the storekeeper-gauger on each Form 1520.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 225.917 *Gauge of wine spirits.* The wine spirits may be gauged by weight in gauging tanks in the warehouse and run directly from such tanks to wine spirits addition tanks or wine spirits storage tanks in the bonded wine cellar; or the wine spirits may be gauged in a weighing tank in the bonded wine cellar, in which case the wine spirits will be run directly from the storage tanks in the warehouse to the weighing tank in the bonded wine cellar; or the wine spirits may be gauged by volume in storage tanks in the warehouse and conveyed directly by unbroken pipelines from storage tanks to wine spirits addition tanks or wine spirits storage tanks in the bonded wine cellar.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 225.918 *Supervision.* The wine spirits will be withdrawn under the supervision of the storekeeper-gauger. The officer supervising the removal of the wine spirits will see that control valves in the pipeline are properly set to

direct the flow of wine spirits to the desired tank before the valve permitting the flow of wine spirits to such tank is opened. The storekeeper-gauger will also see that the valves controlling the flow of wine spirits into or out of tanks are locked with Government locks at all times, except when necessary to be open for the transfer of wine spirits. The keys will remain in the custody of the storekeeper-gauger, or, if no storekeeper-gauger is assigned to the warehouse or distillery, in the custody of the assistant regional commissioner or other officer designated by him.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

WITHDRAWAL IN TANK CARS OR TANK TRUCKS

§ 225.919. *Application, Form 257.* Where it is desired to withdraw wine spirits in tank cars or tank trucks to a bonded wine cellar the procedure prescribed in §§ 225.911 to 225.915 for withdrawal of packages will be followed. The proprietor of the bonded wine cellar will state on his application that the wine spirits are to be transferred by tank car or tank truck.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 225.920 *Tank car and tank truck requirements.* Tank cars and tank trucks used to transport wine spirits for use in wine production must be constructed, marked, inspected, filled, and sealed in the same manner as tank cars and tank trucks used to transport distilled spirits in bond with the exception that the serial number of cap seals used to seal the conveyance will be noted on Form 257 in lieu of Form 236.

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

§ 225.921 *Label to be attached.* When wine spirits are shipped in a tank car or tank truck to a bonded wine cellar for use in wine production, a label, dated and signed by the storekeeper-gauger, showing that the wine spirits are shipped in bond for use in wine production, and giving the name, registry number, and location (city or town and State) of the warehouse from which shipped and the bonded wine cellar to which shipped, shall be securely attached to the route board of the car or truck, where it may be readily examined by internal revenue officers. The label must be of good quality paper and be protected from damage by a coating of transparent shellac or similar transparent protective material. The label will be attached by the warehouseman under the supervision of the internal revenue officer. The label, which will be furnished by the warehouseman, will be in substantially the following form:

Shipped in bond by

CALIFORNIA GRAPE COMPANY

I. R. B. W. No. 80, St. Helena, Calif.,

to

WESTERN WINE COMPANY

B. W. No. 50, Santa Rosa, Calif.,

For use in Wine Production

(Date)

(Storekeeper-gauger)

(68A Stat. 634, 667; 26 U. S. C. 5194, 5373)

WITHDRAWAL OF BRANDY AND WINE SPIRITS FOR EXPERIMENTAL OR RESEARCH USE

§ 225.922 *Brandy and wine spirits for experimental or research use.* Any university, college of learning, or institution of scientific research which has been authorized under the provisions of section 5215, I. R. C., to produce, receive, blend, treat, and store brandy or wine spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, in such quantities as may be reasonably necessary for such purposes, may withdraw brandy or wine spirits from any internal revenue bonded warehouse free of tax pursuant to a letterhead application in triplicate, for such authority to the assistant regional commissioner.

(68A Stat. 640; 26 U. S. C. 5315)

SUBPART II—WITHDRAWAL OF RUM FOR DENATURATION

§ 225.930 *General.* Rum of not less than 150 degrees proof may be withdrawn from an internal revenue bonded warehouse located on the distillery premises, free of tax for denaturation:

(a) By pipeline from warehouse storage tanks through gauging tanks to storage or mixing tanks in a denaturing bonded warehouse located on the distillery premises; or

(b) In original packages for transfer to a denaturing bonded warehouse located on the distillery premises where produced.

(68A Stat. 634, 661; 26 U. S. C. 5194, 5331)

§ 225.931 *Application, Form 573.* When the proprietor of a distillery denaturing bonded warehouse desires to withdraw from an internal revenue bonded warehouse located on the same distillery premises rum of not less than 150 degrees of proof for denaturation, he will file application therefor with the storekeeper-gauger in charge on Form 573, in triplicate. Where the rum to be transferred is in packages, such application will be accompanied by Form 1520, in triplicate, prepared in the manner prescribed in § 225.601. Where the rum is to be transferred from warehouse storage tanks to the denaturing bonded warehouse by pipeline, the applicant shall specify on Form 573 the maximum number of tax gallons to be so transferred.

(68A Stat. 634, 661; 26 U. S. C. 5194, 5331)

§ 225.932 *Sufficiency of bond.* Where the bond covering operation of a denaturing bonded warehouse is given in less than the maximum penal sum of \$100,000, the assistant regional commissioner will inform the storekeeper-gauger in charge of the penal sum of the bond, and the storekeeper-gauger will see that the quantity of spirits transferred to the denaturing bonded warehouse is within the limits of the bond.

(68A Stat. 661; 26 U. S. C. 5331)

§ 225.933 *Report of gauge, Form 1520.* Upon receipt of the Form 1520 the storekeeper-gauger will verify by reference to his records, the entries in the heading thereof and the details of the entry gauge transcribed thereto. If the rum

described in the application is in packages, a careful gauge thereof will be made, except that rum in original packages may be transferred to the denaturing bonded warehouse on the original gauge. Where packages of rum are transferred to the denaturing bonded warehouse on the original gauge the proprietor will copy the details of such gauge on Form 1520. When rum for denaturation is transferred in packages, a careful inspection of such packages will be made prior to transfer, and where evidence of tampering or unusual loss is found the provisions of §§ 225.480 to 225.495 relative to losses of distilled spirits in bond will be followed. If the rum described in the application, Form 573, is to be transferred from warehouse storage tanks, it will be run into a gauging tank and carefully gauged except that where no gauging tank is provided in the warehouse, the rum may be gauged in a gauging tank in the denaturing bonded warehouse, in which case the rum shall be run direct from the storage tanks in the warehouse to the gauging tanks in the denaturing bonded warehouse. The storekeeper-gauger will prepare Form 1520, in triplicate, and enter the details of the gauge thereon.

(68A Stat. 647, 661; 26 U. S. C. 5245, 5331)

§ 225.934 *Transfer of rum.* Upon completion of gauge, the storekeeper-gauger will permit the rum to be transferred. The proprietor will, under the supervision of the storekeeper-gauger and before removal, stencil upon the head of each package, in letters large enough to be easily read, "For Denaturation," and the date of removal. Details of the gauge need not be cut or stenciled on the package.

(68A Stat. 661; 26 U. S. C. 5331)

§ 225.935 *Supervision of transfers.* All transfers of rum from the internal revenue bonded warehouse to the denaturing bonded warehouse will be made under the immediate supervision of the storekeeper-gauger. Where rum is so transferred by pipeline, the storekeeper-gauger supervising the deposit of the rum in a storage or mixing tank in the denaturing bonded warehouse will see that the outlet and all other openings of such tank, except the inlet, are closed and locked and that the valves in the pipeline are so adjusted by the proprietor as to control the flow of spirits into the tank, before the outlet of the warehouse storage tank from which the rum is to be transferred is unlocked. When the rum has been deposited in the tank in the denaturing bonded warehouse the inlet of such tank and the outlet of the storage tank in the internal revenue bonded warehouse will be immediately closed by the proprietor and locked by the storekeeper-gauger. The storekeeper-gauger will not permit the transfer of rum from the internal revenue bonded warehouse to the denaturing bonded warehouse by pipeline unless the use of such pipeline has been approved in accordance with the provisions of this part.

(68A Stat. 661; 26 U. S. C. 5331)

§ 225.936 *Disposition of Forms 573 and 1520.* Upon the transfer of the

rum, the storekeeper-gauger will execute his certificate of gauge and transfer on each copy of Form 573, retain one copy of Form 573 with Form 1520 attached, deliver one copy of each to the warehouseman, and forward one copy of each to the assistant regional commissioner.

(68A Stat. 661; 26 U. S. C. 5331)

SUBPART MM—BOTTLING-IN-BOND DEPARTMENT

SPIRITS TO BE BOTTLLED FOR DOMESTIC PURPOSES

§ 225.950 *Spirits which may be bottled for domestic purposes.* Distilled spirits which have remained in bond in wooden containers for at least four years from the date of original entry, or, in the case of fruit brandy, four years from the date of original gauge, may be bottled in bond before taxpayment at a proof of 100 degrees for domestic use. Reduction to the necessary degree of proof may be effected by the addition of pure water only. In determining the eligibility of spirits for bottling in bond for domestic purposes, whisky, brandy, rum, and other distilled spirits (other than gin) must have been stored continuously for at least four years in charred, recharred, plain, used, or re-used wooden cooperage so that the spirits have been in contact with the wood surface for the purpose of obtaining color or bringing about chemical changes which age and mature the spirits. Spirits (other than gin) which have been stored in wooden cooperage coated or lined with paraffin, or other substances, may not be bottled in bond. Gin to be bottled for domestic purposes must have been stored continuously for at least 4 years in wooden cooperage coated or lined with paraffin, or other substance, which will preclude contact of the spirits with the wood surface and prevent the absorption of wood color and flavor.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.951 *Application.* Application for bottling distilled spirits in bond for domestic purposes will be made to the storekeeper-gauger in charge of the warehouse on Form 1515, in quadruplicate, which will be accompanied by Form 1520, in triplicate, prepared by the proprietor in the manner provided in § 225.601. Upon receipt of the application and the Form 1520 the storekeeper-gauger will satisfy himself that the spirits are eligible for bottling in bond and will inspect and weigh the packages. Where it is determined that any package bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such package will be detained pending further investigation in accordance with the applicable provisions of §§ 225.480 to 225.495. The Form 1515 may be amended to show deletion of any such package. The packages may be inspected and weighed in either the storage portion or the bottling-in-bond department of the warehouse. Where inspection of a package in the bottling-in-bond department discloses evidence of unusual loss that cannot be satisfactorily explained, or of tampering, the package must be returned immediately to the storage portion of the warehouse. The

storekeeper-gauger will enter the weight of each package on Form 1520.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.952 *Gauge.* If the spirits are to be transferred to the bottling-in-bond department by pipeline, the packages will be dumped in the bulk gauge tank in the warehouse. The storekeeper-gauger will make his gauge of the spirits, report the details thereof on Form 1520 prepared by the proprietor, and complete his report on Form 1515. The storekeeper-gauger will also enter on Form 1520 the number of the gauging tank. If the spirits are to be removed in packages to the bottling-in-bond department, the storekeeper-gauger in the warehouse will complete his certificate of removal for bottling on Form 1515. When the spirits have been released for transfer to a bottling-in-bond department, all copies of the application and the Form 1520 will be furnished to the storekeeper-gauger assigned to the bottling-in-bond department in order that such officer may inspect the spirits prior to the bottling thereof. If the spirits are received in the bottling-in-bond department in packages, they will be dumped for bulk gauging, in dumping and reducing or in bottling tanks. The storekeeper-gauger will make his gauge, either by weight or by volume, and will report the gauge on Forms 1520 and 1515 in the same manner as if the spirits had been gauged in the warehouse. He will at that time return the original of the Form 1520 to the storekeeper-gauger in charge of the warehouse. When the bottling is completed, the storekeeper-gauger will enter the details of the cases on Form 1515, forward one copy, with the Form 1520 attached, to the assistant regional commissioner, deliver one copy of each form to the proprietor, return one copy of Form 1515 to the storekeeper-gauger in charge of the warehouse, and file the remaining copy of Form 1515 in the bottling-in-bond department. Spirits tax-paid from the bottling department shall be considered as constructively returned to the storage portion of the warehouse. The storekeeper-gauger shall account for, as deposited, on Forms 1621 and 1513, all spirits bottled. Prior to the removal of cases of distilled spirits from the bottling-in-bond department, the storekeeper-gauger will prepare Form 1620, in triplicate. One copy of the form will be forwarded to the assistant regional commissioner, one copy will be given to the warehouseman, and the remaining copy will be filed as a permanent record as provided in § 225.1102.

(68A Stat. 645; 26 U. S. C. 5243)

BOTTLING FOR EXPORTATION

§ 225.953 *Application and request for regauge.* Whenever an owner desires to remove distiller's original packages of distilled spirits from an internal revenue bonded warehouse for bottling in bond for exportation, he shall execute Form 1515, in quadruplicate. After the application on Form 1515 has been fully executed, the owner will deliver all copies thereof to the proprietor of the warehouse who will execute his request for gauge of the spirits. The proprietor will prepare Form 1520, in triplicate, in the

manner prescribed in § 225.601 and will deliver all copies of Forms 1515 and 1520 to the storekeeper-gauger in charge of the warehouse. The requirements as to eligibility of distilled spirits to be bottled in bond for export and the mingling of such spirits for convenience in bottling are the same as those prescribed in §§ 225.950 and 225.961 for spirits bottled for domestic purposes, except that such spirits may be reduced by the addition of pure water only to not less than 80 degrees of proof, and gin may at any time within eight years after entry in bond be bottled in bond for export.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.954 *Regauge of spirits.* Upon receipt of Forms 1515 and 1520 the storekeeper-gauger will, by reference to his records, verify the entries in the heading of Form 1520 and the details of the entry gauge transcribed thereto and will examine the application and request for gauge. If no discrepancies are found in the Form 1520 and the Form 1515 has been fully executed, and the spirits are eligible for bottling in bond for export, the procedure prescribed in §§ 225.951 and 225.952 will be followed.

(68A Stat. 604, 645; 26 U. S. C. 5011, 5243)

§ 225.955 *Bottling for exportation.* The spirits will be bottled, stamped, cased, and marked in accordance with the provisions of subparts NN, OO, and PP of this part after which the spirits may be returned to the storage portion of the warehouse pending withdrawal for exportation or may be removed for immediate exportation after the filing and approval of Form 206 and proper bond, in accordance with the provisions of §§ 225.817 to 225.819. If the spirits are returned to the storage portion of the warehouse they need not be kept in a separate room or building, but shall be kept separate and apart from all other distilled spirits stored in the warehouse. Spirits removed from the bottling department for immediate exportation shall be considered as constructively returned to the storage portion of the warehouse. The storekeeper-gauger shall account for, as deposited, on Forms 1621 and 1513, all spirits bottled. Prior to the removal of cases of spirits from the bottling-in-bond department, the storekeeper-gauger will prepare Form 1620, in triplicate. One copy of the form will be forwarded to the assistant regional commissioner, one copy will be given to the warehouseman, and the remaining copy will be filed as a permanent record as provided in § 225.1102.

(68A Stat. 644, 645; 26 U. S. C. 5241, 5243)

SUBPART NN—DUMPING, REDUCING, AND BOTTLING

§ 225.960 *Prompt dumping of spirits required.* Spirits which have been gauged in a warehouse gauging tank for bottling in bond must be immediately transferred by pipeline and deposited in proper tanks in the bottling-in-bond department of the warehouse. Packages of spirits removed from the storage portion of the warehouse for bottling in bond must be immediately transferred to the bottling-in-bond department and

their contents promptly dumped and gauged.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.961 *Mingling of spirits.* Under the law distilled spirits of the same kind, differing only in proof, produced at the same distillery by the same distiller under the same name or style and during the same distilling season and year, may be mingled together in the gauging, dumping, reducing, or bottling tank for convenience in bottling. Spirits which differ in kind may not be mingled together. Spirits which have been subjected to a quick-aging process may not be mingled with spirits which have not been quick-aged and are not homogeneous, nor may spirits which have been stored in different kinds of cooperage or under different conditions and are of different composition or character be mingled together. The law authorizes only the mingling together, for convenience in bottling, of spirits of the same kind, which differ only in proof, and prohibits the mingling of different products. Spirits mingled together in bottling must therefore be homogeneous: *Provided*, That spirits contained in packages if marked and branded as prescribed by the Gauging Manual (Part 186 of this title) (in effect at the time of production of the spirits) and which otherwise conform to the requirements set forth in this section will be considered to be homogeneous for mingling and bottling in bond.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.962 *Rinsing of barrels.* When spirits are dumped for bottling in bond, either in the warehouse gauging room or the bottling-in-bond department, the barrels and any char or wood chips contained therein must be thoroughly rinsed. The rinse water should be used to make any necessary reduction in the proof of the spirits dumped from the barrels. Any rinse water remaining after such reduction should be poured upon the ground or into a sewer; it may not be mixed with spirits dumped from other packages.

(a) *Disposition of char and chips.* Char and wood chips dumped from packages must be burned on the warehouse premises, or, if such burning is not practicable due to fire regulations, or to other valid reason, the char or chips must be treated with kerosene before removal thereof from the premises. Where kerosene is used, it must be sprayed or sprinkled on the materials, using not less than 1 gallon of kerosene to each 100 pounds of materials, in such manner as to preclude the abstraction of potable spirits from any part of the materials after removal from the premises. This will be effected by stirring or agitating the materials while the kerosene is being applied. Such burning or treating of materials must be done under the supervision of the storekeeper-gauger. The assistant regional commissioner may authorize any other disposition of the materials that will effectively prevent recovery of spirits therefrom.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.963 *Destruction of marks and brands.* When packages of spirits are dumped for bottling, all marks and brands which such packages are required by law to bear must be completely effaced and obliterated. This should be done immediately upon the completion of the dumping, draining, and rinsing of the packages, and the packages must be immediately removed from the bottling-in-bond department or the gauging room.

(68A Stat. 603, 645; 26 U. S. C. 5010, 5243)

§ 225.964 *Spirits in process of bottling.* The bottling of two or more lots of spirits at the same time in the same bottling room will not be permitted unless two or more complete bottling units are installed and bottling operations are so conducted as to prevent any commingling of different lots of spirits in process of bottling: *Provided*, That where one lot of spirits is in the process of bottling, another lot, or lots, may be dumped and reduced and held in locked tanks until the process of bottling of the first lot has been completed. The process of bottling will be regarded as complete for the purpose of this section when the bottled spirits have been placed in the cases and the cases closed: *Provided further*, That the proprietor shall not dump more spirits than can be bottled expeditiously.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.965 *Storage of spirits.* The bottling-in-bond department may not be used for the storage of distilled spirits in tanks or otherwise.

§ 225.966 *Bottling conducted under supervision.* The entire operation of bottling spirits in bond will be performed by the proprietor of the warehouse under the immediate supervision of the storekeeper-gauger. The storekeeper-gauger shall determine the proof of the spirits in the tank after reduction and thorough mingling by the proprietor, and prior to release for bottling, and make appropriate entries on Form 1515. Before filling bottles, the proof of spirits for domestic use shall be adjusted to 100 degrees. The proof of spirits for export purposes may be reduced to not less than 80 degrees. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling in bond for exportation and are to be bottled and labeled in tenths of a degree of proof, such as 86.8, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The proof in each instance shall be verified as to accuracy by the storekeeper-gauger. While the storekeeper-gauger is charged with the duty of requiring compliance with the provisions of the law and regulations by the persons engaged in the various operations of bottling the spirits, his failure in any instance will not relieve the proprietor of the warehouse from responsibility.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.967 *No substance to be added or subtracted.* No material or substance of any kind other than pure water may be added to distilled spirits during the process of bottling in bond, nor may any sub-

stance or material be subtracted from the spirits: *Provided*, That charcoal, sediment, or other like substances may be removed from the spirits by straining them through cloth, felt, or other like material. No method or process may be applied to alter or change in any way the original condition or character of the spirits, except as authorized by law.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.968 Permissible filtration. Filtering which consists of merely removing foreign substances, such as particles of char, wood, dirt, or other extraneous, solid matter, that have got into the spirits since manufacture, and which does not change the original character of the spirits through removal of congeneric substances, or change the composition of the spirits, may be done in the bottling-in-bond department, since such filtering does not constitute rectification.

§ 225.969 Use of filter aids. Filter aids may be used only when they do not change the original character or composition of the spirits, either by the abstraction of any essential constituent or the addition of any substance. When filter aids are used, the assistant regional commissioner will cause samples of the spirits to be taken at infrequent intervals, before and after the use of the filter aids, for analysis to determine whether the use of such materials has resulted in a change in the original character or composition of the spirits.

§ 225.970 Prohibited filtration. Any filtering of distilled spirits which purifies or refines the same constitutes rectification and may be done only at a rectifying plant. The filtering out of cloudiness in whisky, gin, or other spirits, other than that due to the presence of finely pulverized or agglutinated charcoal or other extraneous, solid matter in suspension, which results in the removal of terpenes or congeneric substances from the spirits and changes their original composition, constitutes rectification.

(68A Stat. 616, 645; 26 U. S. C. 5082, 5243)

§ 225.971 Separate Form 1515 for each lot. If the spirits are dumped from packages or received by pipeline in a dumping, reducing, or dumping and reducing tank, Form 1515 for each lot will be attached to such tank, and when the spirits are transferred therefrom to the bottling tank, this form will be attached to the bottling tank where it must remain until bottling of the spirits has been completed. If the spirits are removed directly into the bottling tank, this form will be attached to such tank and will remain thereon until the bottling of the spirits has been completed. The spirits must be bottled expeditiously.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.972 Bottling tank to be used. All distilled spirits to be bottled in bond must be transferred to an approved bottling tank. Prior to the transfer of the spirits to the bottling tank, and the opening of the inlet to the bottling tank, the storekeeper-gauger will lock the outlet to the tank, which must remain locked until the spirits have been transferred to the bottling tank, at which time the inlet will be locked, the proof and quan-

tity of spirits in the bottling tank verified, and appropriate entry made on Form 1515. The inlet of the bottling tank will remain locked until all spirits within the tank have been bottled and the outlet has been locked. Whenever spirits are to be drawn from bottling tanks or transferred into or out of other tanks secured with Government locks, the storekeeper-gauger will open and close the locks but it shall be the duty of the proprietor to manipulate the stopcocks or valves controlling the flow of the spirits.

(a) Unauthorized bottling forbidden. Spirits may not be bottled from any vessel, tank, or receptacle, other than a designated and approved bottling tank, nor may spirits be bottled except under the immediate supervision of the storekeeper-gauger as required in § 225.966.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.973 Spirits remaining in tanks overnight. Dumping, reducing, dumping and reducing, or bottling tanks, may not be used for the storage of spirits. If spirits are held in the bottling-in-bond department overnight, the tanks in which such spirits are contained must be locked by the storekeeper-gauger. At the conclusion of the process of drawing the spirits from the dumping, reducing, or dumping and reducing tank, to the bottling tank or tanks, the latter must be securely locked, as well as the inlets and outlets thereto, and so remain until the spirits are to be drawn off into bottles, which shall be done as promptly as possible.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.974 Removal of spirits bottled for domestic purposes. Upon completion of bottling, the filled bottles, with labels and strip stamps properly affixed, must be placed in cases marked in accordance with Subpart OO of this part, and the filled cases then sealed, after which such cases must be immediately taxpaid and removed, removed for any authorized tax-free purpose, or returned to the storage portion of the bonded warehouse: *Provided*, That the assistant regional commissioner may authorize the proprietor to remove to the storage portion of the warehouse, pending the receipt of orders involving affixing of brand labels or State stamps, cases temporarily secured by adhesive cloth tape or reinforced paper tape. The affixing of the bottled-in-bond strip stamps, the caution notices, and mandatory (Government) label information required by the regulations issued pursuant to the Federal Alcohol Administration Act (Part 5 of Title 27 of the Code of Federal Regulations) will be performed at the time of bottling and before the goods are returned to the storage portion of the warehouse. However, if all of the mandatory information required by regulations issued pursuant to the Federal Alcohol Administration Act appears on the brand label in lieu of a separate label, the brand label must be affixed to the bottles before the goods are returned to the storage portion of the warehouse: *Provided further*, When orders are received for the spirits in cases temporarily sealed as provided in this section,

the cases must be returned to the bottling-in-bond department for affixing the brand label, or the State stamp, or both. Such returned spirits must be kept apart from other spirits in the bottling-in-bond department until the work of attaching the brand label, or State stamp, or both, and permanent sealing of the cases has been completed.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.975 Losses or gains in bottling. The loss or gain for each lot of distilled spirits bottled in bond (domestic or export) shall be entered by the storekeeper-gauger on Form 1515. Where the bottling of any particular lot of spirits results in a loss or gain of 2 percent or more of the quantity of spirits gauged in the bottling tank, or where there is evidence of theft, the storekeeper-gauger will initiate an immediate investigation to determine the cause of the discrepancy and prepare a letter report, in triplicate, setting forth in detail all facts and circumstances in each case and will forward two copies of the report to the assistant regional commissioner with the gauge and bottling reports covering the lot of spirits in question.

(68A Stat. 604, 645; 26 U. S. C. 5011, 5243)

REMNANT CASES

§ 225.976 Remnant cases of domestic spirits. Where there is less than a case of bottled spirits remaining from a lot of spirits bottled, the remnant will be placed in a case constructed in the same manner as the cases described in § 225.1020. The remnant case will be given the serial number of the last full case containing spirits in the same lot, followed by the letter "R", thus: "100-R" or "161-R". If the next lot of spirits dumped for bottling is of the same kind, produced by the same distiller, under the same name, at the same distillery during the same year and distilling season, the remnant case may be held in the bottling-in-bond department and used for filling a complete case, or the contents may be dumped into the bottling tank and mingled with such other spirits for bottling in bond for domestic purposes. Otherwise, the remnant case will be removed with the other cases from the bottling-in-bond department and appropriate entry made in the record. Such remnant case may be taxpaid for domestic consumption, or returned to the bottling-in-bond department when the next lot of spirits of the same kind, produced by the same distiller, under the same name, at the same distillery during the same year and distilling season is dumped for bottling and (a) the bottles used for filling a complete case, or (b) the contents dumped into the bottling tank and mingled with such other spirits for bottling in bond for domestic purposes. In all cases when a remnant is disposed of as provided in this section, notation will be made on Forms 1515 and 1620 showing the disposition of such remnant.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.977 Remnants of low-proof spirits. Remnants of spirits resulting from overflow in filling bottles, and spirits which have deteriorated in proof

by evaporation or repacking of filters, may be returned, under the immediate supervision of the storekeeper-gauger, to the dumping, reducing, dumping and reducing tank, or bottling tank, containing the same or another lot of spirits of the same kind, produced by the same distiller, under the same name, at the same distillery during the same distilling season and year. Distilled spirits so returned to the dumping, reducing, dumping and reducing, or bottling tank will be reported on Form 1515.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.978 *Remnants of distilled spirits bottled in bond for exportation.* Where there is less than a case of bottled spirits remaining from a lot of spirits bottled in bond for exportation, the remnant will be placed in a case which must be marked and branded as prescribed by this part for marking cases of spirits bottled in bond for exportation, except as to the date of withdrawal and the names of the ports. If the next lot of spirits dumped for bottling in bond for exportation, or for domestic purposes, is of the same kind, produced by the same distiller, under the same name, at the same distillery during the same year and distilling season, the remnant case may be held in the bottling-in-bond department and used for filling a complete case, or the contents, even though differing in proof, may be dumped into the bottling tank and mingled with such other spirits for bottling in bond for exportation, or for domestic purposes. Otherwise, the remnant case will be removed with the other cases from the bottling-in-bond department to the storage portion of the warehouse and appropriate entry made in the record. Such remnant case may be tax-paid for domestic consumption or may be returned from the storage portion of the bonded warehouse to the bottling-in-bond department when the next lot of spirits of the same kind, produced by the same distiller, under the same name, at the same distillery during the same year and distilling season is dumped for bottling in bond for exportation or for domestic purposes and the bottles used for filling a complete case or the contents, even though differing in proof, dumped into the bottling tank and mingled with such other spirits for bottling in bond for export or for domestic purposes.

(68A Stat. 602, 639, 645; 26 U. S. C. 5008, 5214, 5243)

§ 225.979 *Indicia bottles.* Liquor bottles conforming to § 225.984 must be used in the event the remnant is to be returned to the storage portion of the warehouse for taxpayment or for subsequent disposition as bottled-in-bond spirits for domestic consumption.

(68A Stat. 639; 26 U. S. C. 5214)

§ 225.980 *Labels, stamps, marks, and brands.* The bottles must be properly labeled. Where export remnants are used for filling a complete case of spirits bottled in bond for domestic consumption, the export strip stamps must be replaced by the domestic bottled-in-bond stamps. Where export remnants are taxpaid, the export stamps on the bottles

must be replaced by red strip stamps, procured pursuant to Form 428, unless the spirits are 100 degrees of proof and have remained in wooden containers as required by this part for at least four years from the date of original gauge as to fruit brandy, or original entry as to other spirits, in which event they may be stamped with domestic bottled-in-bond stamps. The removal of the export stamps and the affixing of the red strip stamps or the domestic bottled-in-bond stamps, as the case may be, will be under the immediate supervision of the storekeeper-gauger. Remnant cases must be marked and branded as required by Part 230 of this title governing the bottling of taxpaid spirits or the provisions of this part governing the bottling of spirits in bond for domestic purposes, as the case may be.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

§ 225.981 *Records.* In all cases where a remnant is disposed of as heretofore provided, notation will be made on Forms 1515 and 1620, showing the disposition made of such remnant.

§ 225.982 *Taxpayment of remnant cases bottled for exportation.* The tax will be paid on remnant cases removed for domestic consumption pursuant to application on Form 1519, properly modified for the purpose. Such remnants will be removed from the premises immediately upon taxpayment.

(68A Stat. 599, 614, 645; 26 U. S. C. 5006, 5061, 5243)

§ 225.983 *Remnant cases of spirits bottled in bond for exportation returned to bottling-in-bond department.* When remnant cases of spirits bottled in bond for exportation are to be returned to the bottling-in-bond department from the storage portion of the warehouse for use in filling a complete case, they will be included in the application, Form 1515, covering the withdrawal of bulk containers for bottling for exportation.

(68A Stat. 645; 26 U. S. C. 5243)

BOTTLES AND LABELS

§ 225.984 *Liquor bottles.* The proprietor must comply with the provisions of Part 175 of this title respecting the use of properly marked liquor bottles. Spirits may be bottled in bond for domestic purposes in the following-sized bottles and no others: 1 gallon, $\frac{1}{2}$ gallon, 1 quart, $\frac{1}{2}$ quart, 1 pint, $\frac{1}{2}$ pint, $\frac{1}{4}$ pint, and, in the case of brandy, $\frac{1}{10}$ pint. Bottles must be filled as nearly as possible to conform to the amount stated on the stamp, label or bottle, to be contained therein, but in no event may the amount of spirits contained in any bottle, due to the lack of uniformity of the bottles, vary more than 2 percent from the amount stated to be contained therein and, further, in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of spirits bottled as reported on Form 1515.

(68A Stat. 639; 26 U. S. C. 5214)

§ 225.985 *Bottles for exportation.* Distilled spirits may be bottled in bond for exportation in the following-sized

bottles and no others: 1 gallon, $\frac{1}{2}$ gallon, 1 quart, $\frac{1}{2}$ quart, 1 pint, $\frac{1}{2}$ pint, and less than $\frac{1}{2}$ pint. Bottles of less than $\frac{1}{2}$ pint capacity may be of the size desired. Liquor bottles as defined in Part 175 of this title may be used but will not be required in bottling distilled spirits in bond for exportation.

(68A Stat. 639, 645; 26 U. S. C. 5214, 5243)

§ 225.986 *Labels for distilled spirits for domestic consumption.* The labels used on bottles of distilled spirits for domestic consumption must be covered by a "Certificate of Approval of Labels of Domestically Bottled Distilled Spirits," or a "Certificate of Exemption from Label Approval for Distilled Spirits," as required by regulations issued under the Federal Alcohol Administration Act (Part 5 of Title 27 of the Code of Federal Regulations). Labels covered by a certificate of exemption from label approval affixed to bottles of a capacity of $\frac{1}{2}$ pint or more but not exceeding 1 gallon, in which distilled spirits are packaged for sale, must conform to the provisions of Part 175 of this title.

(49 Stat. 1965; 68A Stat. 645; 27 U. S. C. 205; 26 U. S. C. 5243)

§ 225.987 *Certificate to be exhibited.* All bottlers of distilled spirits are required to exhibit certificates of label approval, or certificates of exemption from label approval, upon demand to any internal revenue officer. Internal revenue officers will call upon the proprietor to exhibit the required certificates of label approval or certificates of exemption from label approval. The original certificate or duplicate original issued under the Federal Alcohol Administration Act must be exhibited to the officer. Photostatic copies are not acceptable for this purpose.

(49 Stat. 981, as amended, 68A Stat. 645; 27 U. S. C. 205, 26 U. S. C. 5243)

§ 225.988 *Comparison of labels with contents of bottling tank.* Before releasing spirits from bottling tanks for bottling, the internal revenue officer will require the proprietor to submit to him the label he proposes to use for the spirits in the bottling tank, together with the certificate of label approval or the certificate of label exemption, as the case may be, and he will compare such label with the label affixed to such certificate to see that they agree in every respect except for the differences allowed by the certificate. He will then compare such label with Form 1515 to determine whether the label to be used corresponds in every respect with the spirits in the bottling tank, including age, class and type, and proof. In making this determination he will take into consideration the kind of spirits, the proof of distillation, the kind of cooperage in which the spirits were stored, and whether the spirits were treated with oak chips, etc., as disclosed by the marks and brands on the packages and entered on Form 1515. If the label and spirits agree in every respect, the internal revenue officer will attach the label securely to the copy of Form 1515 to be attached to the bottling tank and release the spirits for bottling. If the label and spirits do not agree in

every respect, the internal revenue officer will withhold the release of the spirits for bottling until the proprietor submits to him a label and a certificate of label approval or exemption, as the case may be, correctly describing the spirits to be bottled.

§ 225.989 *Additional label requirements.* Officers assigned to bottling-in-bond departments of internal revenue bonded warehouses will also see that all labels affixed to containers of distilled spirits subject to the provisions of Part 175 of this title conform to the requirements of such regulations. The methods prescribed in § 225.988 will be followed in making such determinations.

§ 225.990 *Tests of bottled spirits.* Officers assigned to bottling-in-bond departments will, at frequent, irregular intervals during the process of bottling, test and examine the bottled spirits to determine (a) whether the label attached is identical with the label verified by the internal revenue officer under § 225.988; (b) whether the bottled spirits agree in proof with the data on the label and stamp; and (c) whether the quantity agrees with the data on the label, stamp or bottle, subject to the limitation prescribed by §§ 225.984 and 225.985. The test as to quantity will be made (1) by the utilization of a glass graduate standardized at 60 degrees Fahrenheit to be provided by the proprietor or (2) by weighing a given number of empty bottles and reweighing the same bottles after filling. If the contents do not agree as to quantity (subject to the limitation of §§ 225.984 and 225.985) or as to proof (subject to a normal drop in proof occurring during bottling operations not to exceed three-tenths of a degree) with the respective data on the label, stamp or bottle, the internal revenue officer will withhold release of the bottled spirits and require the proprietor to rebottle, recondition (where permissible), or relabel the spirits in such manner that the label will correctly describe the contents. However, the proof at the beginning of the bottling operations shall always be set exactly as provided in § 225.966.

§ 225.991 *Proprietor's responsibility.* Notwithstanding that internal revenue officers assigned to bottling-in-bond departments of internal revenue bonded warehouses are required to verify labeling data, full responsibility rests upon the proprietor to see that the labeling of all spirits bottled at his plant is in conformity with the requirements of the Federal Alcohol Administration Act and regulations issued thereunder, and Part 175 of this title.

§ 225.992 *Labeling of distilled spirits bottled for exportation.* All bottles containing distilled spirits bottled in bond for exportation shall have securely affixed thereto a label showing the following information:

- (a) Kind of spirits;
- (b) Name of actual bona fide distiller, or the name of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused;

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(c) The registry number of the distillery and State in which produced;

(d) Proof of the spirits;

(e) The words "Bottled in Bond for Export";

(f) The name or trade name of proprietor of the warehouse (if desired);

(g) The registry number of the internal revenue bonded warehouse and State in which bottled.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.993 *Caution notice.* Every person bottling distilled spirits in bond, except for export, shall attach to each bottle filled by him a caution notice reading as follows:

This bottle has been filled and stamped under the provisions of sections 5008 and 5243 Internal Revenue Code. Any person who shall reuse the stamp affixed to this bottle or remove the contents of this bottle without so breaking the stamp affixed thereto as to prevent reuse, or who shall sell this bottle, or reuse it for distilled spirits, will be liable to the penalties prescribed by law.

This notice shall be of convenient size for attachment to the bottle, shall be printed in plain, legible characters, with a border in a color contrasting with the color of the label, and shall be securely attached to the bottle. The type used in printing caution labels shall not be less than 6 point when used on bottles of 1 pint or more. When spirits are bottled for exportation, the proprietor may attach the caution notice to the bottles if he so desires.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

§ 225.994 *Trade-marks and distiller's name.* The label which contains the trade-mark or special name which the owner may see fit to give to his spirits, or some additional label equally conspicuous, shall be affixed to such bottles of spirits for domestic purposes, and shall bear the real name of the actual bona fide distiller or the name of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused, and the registry number of the distillery and State in which produced; the registry number of the warehouse and State in which bottled; and the name or trade-name of the proprietor of the warehouse (if desired). In addition thereto the labels must conform to the provisions of regulations issued under the Federal Alcohol Administration Act (Part 5 of Title 27 of the Code of Federal Regulations) and Part 175 of this title except when bottled for exportation.

(49 Stat. 981, as amended, 68A Stat. 645; 27 U. S. C. 205, 26 U. S. C. 5243)

BOTTLING OF DISTILLED SPIRITS UNDER AN APPROVED TRADE NAME

§ 225.995 *Qualification of proprietor.* Whenever the proprietor desires to bottle or label distilled spirits under a trade name, he must procure approval of such name in the manner prescribed by § 225.280 prior to bottling or labeling spirits under such name.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.996 *Notice, Form 404.* Upon approval by the Director, Alcohol and To-

bacco Tax Division, of the names under which distilled spirits will be bottled, such names may be used by the proprietor, provided notice of intention to use such name or names is given to the assistant regional commissioner on Form 404, in triplicate. The store-keeper-gauger will not authorize the bottling of spirits under a name or names which have not been approved pursuant to the filing of Forms 27-D and 404.

§ 225.997 *Bottling.* Before bottling distilled spirits in bond under an approved trade name, the proprietor will execute Form 1515, in quintuplicate, in accordance with § 225.951, and show in the appropriate place on the form the name under which the spirits are to be bottled.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.998 *Marking, branding, stamping, and labeling.* The spirits will be marked, branded, stamped, and labeled as prescribed by the provisions of Subparts OO and PP of this part.

(68A Stat. 645; 26 U. S. C. 5243)

SUBPART OO—MARKS AND BRANDS AND CONSTRUCTION OF CASES

§ 225.1010 *Serial numbers.* Each case of distilled spirits filled in the bottling-in-bond department must be numbered serially beginning with No. 1 for the first case filled: *Provided*, That the series in current use at existing bottling-in-bond departments will be continued. Where there is a change in the individual, firm, or corporate name, or in the trade name or style, of the proprietor, the series in use at the time of such change will be continued, but a new series will be commenced where there is a change of proprietorship of the warehouse. Where spirits are bottled in more than one bottling room at the same time, and it is impracticable to number the cases consecutively, a series identified by a letter may be used for each bottling room, as A1, A2, etc., and B1, B2, etc. The series of numbers in use for numbering cases containing spirits bottled for domestic consumption will be continued in numbering cases containing spirits bottled in bond for exportation. Remnant cases will be given the serial number of the last full case containing spirits in the same bottling lot followed by the letter "R," thus: "100R," or "161R."

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.1011 *New or separate series.* The serial numbers of the cases filled shall run consecutively and shall not be broken in any manner except that whenever the number 1,000,000 is reached, the proprietor may, if he so desires, begin a new series, commencing with No. 1 as originally. Cases may be serially numbered either before or after filling.

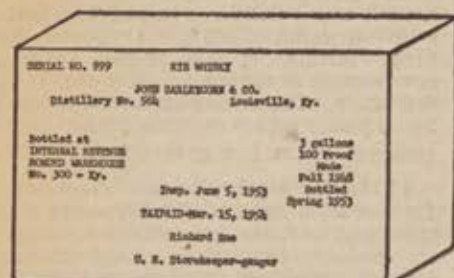
(68A Stat. 645; 26 U. S. C. 5243)

§ 225.1012 *Marks and brands on cases for domestic spirits.* Each case of distilled spirits bottled in bond for domestic consumption shall have plainly burned, embossed, printed, or stenciled on the Government side thereof, in letters and figures not less than one-half of an inch in height, in addition to the serial number, the registry number and

State in which the warehouse at which the spirits are bottled is located, and the quantity and proof of the spirits. There shall also be plainly burned, embossed, printed, or stenciled on the Government side of each case, in letters not less than one-half of an inch in height, the kind of spirits, such as "Rye Whisky," "Rum," "Gin," etc., the real name of the actual bona fide distiller or of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused, the registry number and location (city or town and State) of the distillery at which the spirits were produced, and the season and year of production and bottling. The word "Inspected," followed by the date of inspection, shall also be marked on each case in letters and figures not less than one-fourth of an inch in height. Where the spirits are taxpaid and removed directly from the bottling-in-bond department, the word "Taxpaid," in letters not less than one-half inch in height, and the date the stamps were cancelled and surrendered, and the name of the storekeeper-gauger supervising the removal of the spirits from the bottling-in-bond department, and his title, in letters and figures not less than one-fourth inch in height, shall be marked on the Government side of the case. All marks on cases, which are embossed, printed, or stenciled, must be made with a permanent ink in a color distinctly in contrast to the color used as a background. No marks, brands, labels, caution notices, or other devices whatever, other than those required by law and this part will be permitted on the Government side of the case: *Provided*, That the assistant regional commissioner upon written application from the proprietor, may authorize for commercial identification purposes, the affixing of bottle labels or other concise data descriptive of the contents of the case, including indications of payment of State taxes thereon or symbols, in lieu thereof, so describing the contents: *Provided further*, Such additional information is set apart from and does not in any way detract from, conflict with, or obscure any of the markings required to be placed thereon by this part.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.1013 Illustration of marks; spirits for domestic purposes. The required marks will be placed on the cases containing spirits for domestic purposes in the following manner and order:

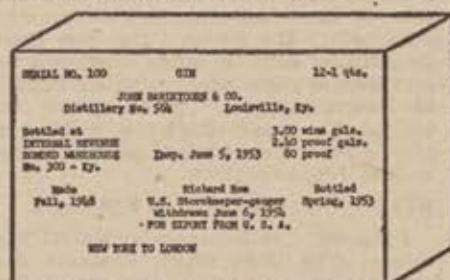


§ 225.1014 Marking cases for spirits bottled for exportation. The Government side of cases used for packaging distilled spirits bottled in bond for ex-

portation shall be marked (insofar as applicable) as provided in § 225.1012 for distilled spirits bottled in bond for domestic consumption, and in addition thereto, the number and capacity of the bottles contained therein, the words "For Export from U. S. A.," the name of the domestic port from which, and the name of the foreign port to which, the spirits are to be shipped shall be plainly burned, embossed, printed, or stenciled thereon, in letters and figures of not less than one-half inch in height. The name and title of the storekeeper-gauger supervising the removal for exportation, and the word "Withdrawn," followed by the date of withdrawal for exportation, shall also be marked on each case in letters and figures not less than one-fourth of an inch in height. If the cases are embossed, printed, or stenciled, a permanent ink shall be used as prescribed in § 225.1012.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.1015 Illustration of marks; spirits for exportation. The marks and brands will be placed on the cases containing spirits for exportation in the following manner and order:



§ 225.1016 Verification of marks and brands. The storekeeper-gauger will verify the marks and brands on cases with the reports, and shall satisfy himself of the accuracy and correctness of the marks and brands.

§ 225.1017 Preservation of marks and brands. The marks, brands, and serial numbers required by this part to be placed on cases shall not be removed therefrom, or obscured or obliterated, before the contents thereof have been removed.

§ 225.1018 Obscurity of marks and brands. The marks and brands required by law and regulations to be applied to cases of distilled spirits bottled in bond are designed to evidence the legal status of the spirits contained therein, and they must not be obscured in any manner or covered by incasing the package bearing the same in another, but must at all times be in such condition as to admit of ready examination by internal revenue officers.

§ 225.1019 Imitation stamps, labels, trade marks, or caution notices. Any person who affixes or causes to be affixed to any package containing distilled spirits any imitation stamp, or other label, device, or document, either designed as a trade mark, or caution notice, and which shall be in the similitude or likeness of or which has the semblance or general appearance of any internal revenue stamp required by law

to be affixed to or upon any packages containing spirits, is liable to severe penalties, and, in addition, the package with its contents shall be forfeited to the United States.

§ 225.1020 Cases. Distilled spirits bottled in bond may be placed in cases constructed of wood, fiberboard, or other material provided such cases are so constructed as to afford protection against breakage or theft during storage or transfer in bond. Cases constructed of wood shall have the outer surface of the Government side or end made of dressed lumber.

SUBPART PP—BOTTLING-IN-BOND STRIP STAMPS

§ 225.1030 Strip stamps. The proprietor must affix to each bottle of distilled spirits a domestic strip stamp, or export strip stamp, as the case may be, in such manner as to be broken on opening the bottle, in accordance with §§ 225.1043 to 225.1045.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1031 Stamp denominations. Domestic bottled in bond strip stamps will be provided in the following denominations and in no other: 1 gallon, ½ gallon, 1 quart, ½ quart, 1 pint, ½ pint, and less than ½ pint. Stamps of less than ½ pint denomination will be used on bottles of the following sizes: ½ pint, ¼ pint, and ⅛ pint.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1032 Full sheets of stamps to be requisitioned. Requisitions for stamps by proprietors of warehouses must be made for full sheets. Stamps in quantities less than a full sheet may not be issued by district directors to proprietors of internal revenue bonded warehouses.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1033 Requisition, Form 403. Proprietors of internal revenue bonded warehouses may requisition domestic bottled in bond strip stamps in anticipation of their reasonable and current needs. Requisition for such stamps will be made on Form 403, in triplicate.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1034 Approval of requisition. The proprietor will submit all copies of the requisition, Form 403, to the storekeeper-gauger in charge of the warehouse for approval, who will indicate his approval by signing each copy of the form. Before approving the requisition, the storekeeper-gauger will see that it is properly executed and will satisfy himself that the number of stamps for which requisition is made is necessary for the reasonable and anticipated current needs of the proprietor. Upon approval of the form, the approving officer will return all copies to the proprietor.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1035 Procurement of stamps. Strip stamps will be furnished, without charge, to the proprietor by the district director of the district in which the warehouse is located. Stamps may not be procured by one proprietor from another, nor may they, except in cases of emergency, be requisitioned from district directors of other districts. The

proprietor will forward all copies of the approved Form 403 received from the approving officer to the district director for the stamps. The district director will enter the serial numbers of the stamps issued and stamp the date of issue on all copies of Form 403. The district director will retain one copy and immediately forward the original copy to the assistant regional commissioner, and forward one copy to the proprietor. The district director will forward the stamps to the proprietor. The proprietor will deliver the stamps and corresponding Form 403 to the internal revenue officer for verification of receipt. Upon such verification the proprietor will enter receipt of the stamps on Form 1606.

(68A Stat. 602; 26 U. S. C. 5008)

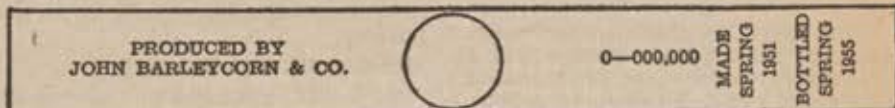
§ 225.1036 Shipment of stamps. Where the stamps are to be shipped, the district director will forward the stamps to the proprietor by registered mail or express. The expense of forwarding the stamps will be borne by the proprietor. The district director may furnish the stamps directly to the proprietor.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1037 Remittance for postage or registry fee. If the stamps are to be sent by registered mail, there should be attached to the order sufficient postage stamps, or remittance, to pay postage and registry fee and any required registry surcharge as provided by the postal laws and regulations. The local postmaster should be consulted relative to the amount of registry fee and surcharge required. Stamps may also be forwarded by express at the expense of the proprietor in accordance with § 225.1036.

§ 225.1038 Original overprinting of stamps. Bottled in bond strip stamps must be overprinted, such overprinting to be in the blank spaces provided therefor. The overprinting of stamps may be done by the proprietor, or by a designated commercial printer approved by the assistant regional commissioner. In overprinting strip stamps the proprietor should exercise the utmost care to see that the name of the producing distiller of the spirits is precisely the same as that shown in the notice filed by the distiller and is in agreement with the marks and brands on the packages of distilled spirits to be bottled in bond: *Provided*, That where the word "company," "corporation," or "incorporated," is a part of the name of the actual bona fide distiller of the spirits, or of the individual, firm, partnership, corporation, or association, in whose name the spirits were produced and warehoused, the abbreviation of such word may be used. Overprinting will be done in red ink with not less than 8-point type. The season and year when the spirits were produced, and the season and year when bottled, will be overprinted in the blank spaces on the end of the stamp bearing the serial number: *Provided*, That in the case of stamps of "Less than ½ pint" denomination, which do not have serial numbers, the season and year when produced, and the season and year when bottled, will be placed on the right-hand

end of the stamp. In the blank space on the other end of the stamp will be placed the name of the actual bona fide distiller, or the name of the individual, firm, partnership, corporation, or association, in whose name the spirits were produced and warehoused. Overprinting of the stamp will be in the following form:



(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1039 Second overprinting of stamps. Strip stamps for distilled spirits bottled in bond, which the proprietor cannot use in the season or year for which they were overprinted, or on which an error was made in overprinting the season or year of production or bottling, may be again overprinted. The season or year when "produced" or when "bottled," or both, overprinted on the stamps may be obliterated and the desired seasons or years of production and bottling substituted. One overprinting only will be permitted after the original or first overprinting. The name of the distiller or any data other than the season and year of production or bottling, may not be changed after the original or first overprinting.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1040 Disposition of unused stamps. Whenever a proprietor possesses unused bottled-in-bond stamps for which he has no use and desires to be relieved of the custody of such stamps he may dispose of the unused stamps in accordance with the instructions of the assistant regional commissioner. The proprietor will make appropriate notation on Form 1606 of the disposition made of such stamps.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1041 Proprietor's responsibility. Proprietors who have custody of bottled-in-bond strip stamps will be held strictly responsible for the proper control and accounting of all stamps received, used, and on hand. They shall be held responsible for proper affixing of the stamps to bottles of spirits and for making a proper accounting for all stamps reported mutilated. If, after filling the cases, there remain bottles less than the number necessary to constitute a case of the size being filled, such bottles must be stamped and placed in a case conforming to the requirements of this part.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1042 Unaccounted for stamps. Failure to properly account for bottled-in-bond strip stamps may result in the disapproval of requisitions for stamps submitted by the proprietor. In flagrant cases other punitive action may be taken, including the suspension or revocation of the bottling permit.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1043 Manner of affixing stamps. The stamps must be securely affixed to the bottles with the use of a good adhesive. The adhesive used must

be in proper liquid condition, and care must be taken to cover the entire back of the stamp with the adhesive, and to press the whole surface of the stamp firmly against the surface of the bottle sufficiently long to cause the entire surface of the stamp to adhere securely to the bottle. The stamp must be affixed

in such manner that it will be broken when the bottle is opened, but so placed that upon opening a portion of the stamp will be left attached thereto until emptied.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1044 Concealing or obscuring stamps. No part of the stamp shall be concealed or obscured by any label or other covering, except that a cup may be placed over the opening of the bottle, or the bottle may be placed in a carton, as hereinafter provided. Seals made of cellulose or other material which are shrunk or otherwise fitted over the necks of the bottles and cover the stamps must be sufficiently transparent to permit the stamps to be plainly seen and the data thereon easily read. No cup or cap may be placed over the opening of a bottle and cover the stamp, unless such cup or cap is transparent, or is so placed on the bottle that it may be readily removed at any time without injury to the stamp, and the arrangement is such that a portion of the stamp will be plainly visible when the cap or cup is in place. Cartons or other coverings of bottles of distilled spirits are permitted, if so made that they may be opened and closed without being torn or broken. Sealed cartons or other coverings may not be used unless transparent, or unless openings therein permit the data on the stamp and the indicia and penalty clause required by Part 175 of this title on the bottle to be plainly seen and read.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1045 Affixing stamp over cup or cap. The stamp may be affixed over a cup or cap placed over the opening of the bottle, provided the arrangement is such that the stamp will be broken when the cup or cap is unscrewed or removed. Where it is desired to affix the stamp over a removable cup or cap, the cup or cap must be securely screwed or fastened over the opening of the bottle. The stamp must be securely affixed with a strong adhesive to both the cup or cap and the bottle. Where it is desired to affix the stamp over a cap or seal made of cellulose or other similar adhesive material which is so shrunk or otherwise fitted over the neck of the bottle as to be unremovable, without being destroyed and is of such size and construction that the stamp will not extend beyond such cap or seal to permit each end to be affixed to the surface of the bottle, it will not be necessary for the ends of the stamp to be affixed to the surface of the bottle, provided the cap or seal is affixed to the bottle in such manner that when

the bottle is opened the stamp will be broken and a portion of the cap or seal and stamp will remain attached to the bottle. In any case where there is doubt as to the propriety of the use of any cup or cap, the bottle and cup or cap should be submitted to the assistant regional commissioner for a ruling thereon.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1046 *Requisitions for export stamps.* Export strip stamps will be provided in the following denominations and in no other: 1 gallon, $\frac{1}{2}$ gallon, 1 quart, $\frac{1}{2}$ quart, 1 pint, $\frac{1}{2}$ pint, and less than $\frac{1}{2}$ pint. The provisions of §§ 225.1031 to 225.1039, relative to requisitions, shipment, and the overprinting of domestic strip stamps (except that in overprinting export strip stamps the proof at which the spirits are to be bottled will be printed on the stamps in addition to the other required data), will, insofar as applicable, apply to export strip stamps. Export strip stamps must be securely affixed to the bottles in the same manner as strip stamps are required to be affixed to spirits bottled in bond for domestic consumption. The provisions of §§ 225.1043 to 225.1045 respecting the affixing of strip stamps, and the use of cups, caps, and seals, and cartons, on bottles so stamped shall apply to spirits bottled for exportation.

(68A Stat. 603, 645; 26 U. S. C. 5009, 5243)

RECORD AND REPORT OF STRIP STAMPS

§ 225.1047 *Record, Form 1606.* Proprietors will make a record and report of strip stamps received and used on Parts 1 and 2 of Form 1606, in accordance with the provisions of §§ 225.1129 and 225.1130.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

§ 225.1048 *Removal prohibited.* Strip stamps which have been affixed to bottles of distilled spirits shall not be removed therefrom, except in the process of breaking when the bottles are opened; and such stamps, used or unused, may not be requisitioned, transferred or possessed, except as specifically provided by law or regulations.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

SUBPART QQ—REBOTTING, RELABELING, AND RESTAMPING OF BOTTLED SPIRITS

§ 225.1060 *Permission must be obtained.* Warehousemen desiring to rebottle, relabel, or restamp spirits bottled in bond will make application to the assistant regional commissioner of the region in which the work is to be performed. The application will state specifically the reasons why such is necessary, giving the serial numbers of the cases, the name of the distiller producing the spirits, the registry number of the distillery and State in which produced, season and year of production, the name of the original bottler, the registry number of the warehouse and State in which bottled, season and year of original bottling, and whether the spirits have been continuously in the possession of the applicant. If the spirits were originally bottled by a warehouseman other than the applicant, the application must be accompanied by a statement from the original bottler consenting to the recon-

ditioning thereof by the applicant. Warehousemen and assistant regional commissioners will bear in mind that the rebottling, relabeling, or restamping of bottled-in-bond spirits may be done only when necessary to render the spirits merchantable. The work must be done at such time and in such manner as will require no unnecessary supervision, or assignment of additional officers for that purpose.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.1061 *Examination of spirits.* Upon receipt of such application, the assistant regional commissioner will have the storekeeper-gauger in charge at the warehouse, or an inspector, examine the condition of the spirits and verify the data contained in the application. The officer will make a full report of his inspection to the assistant regional commissioner.

§ 225.1062 *Action on application.* If the assistant regional commissioner finds that the reconditioning, rebottling, relabeling, or restamping of the spirits is necessary, he will approve the application. Cases of taxpaid bottled-in-bond spirits, which have left the premises of the warehouseman, may be rebottled, restamped, or relabeled, provided the assistant regional commissioner is satisfied, upon investigation, that the spirits have not been tampered with in any manner, and are of the required proof for bottled-in-bond spirits. Where taxpaid bottled-in-bond spirits have left the premises of the warehouseman, and investigation discloses that the spirits have been tampered with, or where the assistant regional commissioner is doubtful as to the proper action to be taken, rebottling, relabeling, or restamping should not be authorized until the matter has been referred to the Director, Alcohol and Tobacco Tax Division, for consideration and advice.

§ 225.1063 *New strip stamps required.* Whenever bottled distilled spirits are dumped for rebottling, the strip stamps on the bottles must be destroyed at the time of dumping, and new strip stamps must be affixed to the bottles in which the spirits are rebottled. The new stamps will bear the same data as to seasons and years when produced and bottled, the name of the distiller or the name of the individual, firm, partnership, corporation, or association, in whose name the spirits were produced and warehoused. The registered distillery number, and the number and region of the warehouse at which originally bottled will not be printed on new stamps where stamps of prior issues bearing such data are affixed to the bottles.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

§ 225.1064 *Indicia bottles.* The bottles must bear the indicia, and conform to the standards of fill, required by this part and by Part 175 of this title. The reconditioned spirits may be rebottled in the same bottles from which removed if such bottles containing the spirits originally conform to the requirements of Part 175 of this title and bear the proper indicia and have not been sold to the consumer or opened, and the use of such bottles

is authorized by the assistant regional commissioner in accordance with the said regulations.

(68A Stat. 639; 26 U. S. C. 5214)

§ 225.1065 *Relabeling.* If the spirits are to be relabeled, the new label to be used must be covered by an appropriate certificate of label approval or a certificate of exemption from label approval issued under the Federal Alcohol Administration Act. If the new label is covered by a certificate of exemption from label approval, it must conform to the requirements of Part 175 of this title. Authorization to relabel spirits which have left the possession of the original bottler must be obtained by the proprietor of the warehouse who is to do the relabeling from the assistant regional commissioner in accordance with § 225.1060.

(49 Stat. 1965; 68A Stat. 639; 27 U. S. C. 205; 26 U. S. C. 5214)

§ 225.1066 *Supervision required.* All rebottling, relabeling, and restamping of spirits must be conducted in a bottling-in-bond department under the supervision of a storekeeper-gauger; *Provided,* That the assistant regional commissioner may authorize the relabeling or restamping of spirits in an internal revenue bonded warehouse not having a bottling-in-bond department where space and facilities for such activities are available. Spirits of two or more distillers, or spirits produced at different distilleries, or produced under two or more trade names by the same distiller, or of different seasons' or years' production or bottling, may not be reconditioned at the same time, and rebottling operations may not be conducted at a time when other spirits are in the process of bottling except where two or more complete bottling units are installed as provided in § 225.964.

(68A Stat. 645; 26 U. S. C. 5243)

§ 225.1067 *Filtering.* Warehousemen may remove by straining through cloth, felt, or other like material, any charcoal, sediment, or other like substances found in the spirits. In the process of rebottling, the spirits may not be subjected to any treatment deemed to be rectification as defined in Part 235 of this title.

§ 225.1068 *Records and reports.* Application will be made on Form 1515, properly modified, for the removal of bottled spirits from the storage portion of the internal revenue bonded warehouse for rebottling or restamping. Untaxpaid spirits which are rebottled will be accounted for in the same manner as spirits originally entered for bottling in bond. Untaxpaid spirits which are to be restamped or relabeled only will not be accounted for on Form 1621 or 1513 nor in the case of relabeling on Form 1515. Taxpaid spirits which are rebottled, relabeled, or restamped will not be accounted for on the records except that application on Form 1515 will be made when such spirits are to be rebottled or restamped in accordance with this part, and the form will be properly modified to show that the spirits to be rebottled or restamped are taxpaid.

(68A Stat. 602, 645; 26 U. S. C. 5008, 5243)

SUBPART RR—SALES OF DISTILLED SPIRITS BY PROPRIETORS OF BONDED WAREHOUSES

§ 225.1080 *Bulk containers.* Under the regulations issued pursuant to the Federal Alcohol Administration Act (Part 3 of Title 27 of the Code of Federal Regulations), proprietors of internal revenue bonded warehouses may sell or dispose of distilled spirits in bulk, i. e., in containers having a capacity in excess of 1 gallon, (a) to distillers and proprietors of internal revenue bonded warehouses, industrial alcohol plants and industrial alcohol bonded warehouses (holding a permit under the Federal Alcohol Administration Act), including those operating taxpaid bottling houses; (b) to proprietors of class 8 customs bonded warehouses (imported spirits only); (c) to rectifiers; (d) to proprietors of bonded wine cellars (wine spirits or alcohol) for use in wine production; (e) to any agency of the United States, or of any State or political subdivision thereof; (f) for export; (g) on warehouse receipts, conforming to the regulations issued under the Federal Alcohol Administration Act, for distilled spirits in internal revenue bonded warehouses; and (h) for industrial use in accordance with the regulations issued under the Federal Alcohol Administration Act (Part 2 of Title 27 of the Code of Federal Regulations), as follows: For experimental purposes, and for use in the manufacture (1) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (2) of toilet products; (3) of flavoring extracts, sirups, or food products; or (4) of scientific, chemical mechanical, or industrial products, provided such products are unfit for beverage use. Under the regulations issued pursuant to the Federal Alcohol Administration Act (Part 3 of Title 27 of the Code of Federal Regulations) warehousemen may not sell in bulk for industrial use other distilled spirits (except neutral spirits—fruit or alcohol) unless such spirits are shipped or delivered directly to the industrial user thereof.

(49 Stat. 985; 68A Stat. 634; 27 U. S. C. 206; 26 U. S. C. 5194)

§ 225.1081 *Retail containers.* Except as provided in § 225.1080, proprietors of bonded warehouses may sell or dispose of distilled spirits only in containers having a capacity of 1 gallon or less. All such containers having a capacity of $\frac{1}{2}$ pint or more must conform to the requirements of Part 175 of this title.

(49 Stat. 981, as amended, 68A Stat. 639; 27 U. S. C. 205, 26 U. S. C. 5214)

SUBPART SS—SPECIAL (OCCUPATIONAL) TAXES

§ 225.1085 *Wholesale and retail liquor dealer.* Proprietors of bonded warehouses who sell distilled spirits must file returns on Form 11, and pay special (occupational) taxes as wholesale liquor dealer or retail liquor dealer, or both, in accordance with the law and regulations governing the payment of such special taxes unless they are qualified as distillers and sell only distilled spirits of their own production at the place of manufacture, or the place of storage in bond, in the original packages to which the

wholesale liquor dealer's stamps are affixed as provided in § 225.1087.

(68A Stat. 618, 620; 26 U. S. C. 5111, 5121)

§ 225.1086 *Warehouse receipts covering distilled spirits.* Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every proprietor of an internal revenue bonded warehouse who sells, or offers for sale, warehouse receipts for distilled spirits stored in internal revenue bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold or offered for sale, and must file return and pay occupational tax as provided in § 225.1085. Sellers of warehouse receipts must also possess a wholesaler's basic permit under the Federal Alcohol Administration Act.

(49 Stat. 978, 68A Stat. 618, 620; 27 U. S. C. 203, 26 U. S. C. 5111, 5121)

§ 225.1087 *Exemption of distiller.* No distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages, to which the wholesale liquor dealer's stamps are affixed, shall be required to pay the special tax of a wholesale dealer in liquors on account of such sales. This provision does not exempt distillers from the payment of special taxes for sales of distilled spirits of their own production in bond (by warehouse receipt or otherwise), or in cases or containers other than the original packages, or for exportation, use in wine production, use of the United States, etc., without attachment of wholesale liquor dealer's stamps to the original packages, nor does it exempt them from liability for special taxes where distilled spirits produced by other distillers are sold by them. This exemption does not apply to the sale of brandies blended and packaged by a distiller in an internal revenue bonded warehouse.

(68A Stat. 619; 26 U. S. C. 5113)

§ 225.1088 *Exemption from special tax as a rectifier.* Proprietors of internal revenue bonded warehouses who blend brandies under the provisions of section 5023 of the Internal Revenue Code shall not be required to pay special tax as rectifiers.

(68A Stat. 606; 26 U. S. C. 5023)

SUBPART TT—STOREKEEPER-GAUGER'S FILES AND RECORDS

§ 225.1100 *Summary of deposits and withdrawals, Form 1621.* The storekeeper-gauger in charge of each internal revenue bonded warehouse shall keep a summary on Form 1621 of the spirits entered into, withdrawn from, and remaining in warehouse. Entries shall be made as indicated by the headings of the columns and lines on the form and in accordance with instructions issued by the Director, Alcohol and Tobacco Tax Division. Daily entries need not be made in the column "Balance in Warehouse," but the account shall be balanced and posted monthly, or at the end of each page if transactions are sufficiently numerous to fill more than

one page per month. In the case of packages of blended brandies, the registry number of the warehouse where such packages were filled shall be substituted for the registry number of the distillery. The records shall be arranged alphabetically by States (a) numerically by distilleries according to registry number within each State and (b) in case of blended brandies, numerically by internal revenue bonded warehouses according to registry number within each State. Separate sheets shall be used for each kind of spirits (including blended brandies) and for each season's production, and for packages, cases, storage tanks, tank cars, tank trucks, and packages of blended brandies. A summary account for each producer showing for packages, cases, storage tanks, tank cars, and tank trucks the total deposits and withdrawals by kind of spirits shall be maintained. Warehouse summary accounts showing for packages, cases, storage tanks, tank cars, and tank trucks the total deposits and withdrawals by kinds of spirits and the total deposits and withdrawals of all kinds of spirits should be maintained. This record shall also be used by storekeeper-gaugers in connection with the preparation of the monthly report on Form 1513.

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.1101 *Storage tank account.* In addition to the accounts required by § 225.1100, the storekeeper-gauger shall maintain a separate account of each warehouse storage tank on Form 1621, and will report all deposits, withdrawals, and quantities of spirits remaining in such tanks in monthly report, Form 1513, as provided in § 225.1111. Stocks of spirits remaining on hand in storage tanks, by kind and season of production, will be determined by physical inventory at the close of each month. Losses from each storage tank will be determined at the time of monthly physical inventories or at such time during the month that a tank is emptied, and losses, if any, entered on Form 1621 and monthly report, Form 1513. Losses sustained from a storage tank which do not exceed 1 percent of the total quantity contained in such tank during the month, provided there are no circumstances indicating that any of the spirits were lost by theft or unauthorized voluntary destruction, may be considered as normal storage losses; otherwise such losses shall be investigated and reported in accordance with the procedure prescribed by §§ 225.480 to 225.495.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.1102 *Files and records covering deposits.* The storekeeper-gauger's copies of Forms 1520 covering the deposit in warehouse of spirits received from distilleries or in tank cars or tank trucks from other warehouses, Forms 1619 and 1620 covering spirits received from other warehouses, Forms 1520 covering packages filled from storage tanks and retained in the warehouse, Forms 1520 covering packages filled from brandy-blending tanks, and Forms 1620 covering cases of bottled in bond spirits returned to the storage portion of the warehouse shall be filed as permanent

records in the office of the storekeeper-gauger. Before filing such forms, the storekeeper-gauger shall make appropriate entries covering the receipt of the spirits in his summary of deposits and withdrawals, Form 1621. The storekeeper-gauger shall enter the date of deposit of the spirits in the warehouse at the bottom of each form. Forms 1520 and 1619 shall be filed under the name of the producing distiller (or warehouseman in the case of blended brandies) and arranged in chronological order according to date of deposit and in sequence by serial numbers of the packages where possible. Forms 1620 shall be filed similarly in a separate binder. Separate files shall be maintained for storage tanks and for packages filled from storage tanks and retained in the warehouse and for packages filled from brandy-blending tanks. Where two or more lots of spirits are deposited in the same storage tank, the Forms 1520 covering such deposits shall be kept together. The date of deposit of the spirits shall be entered at the bottom of each Form 236 covering spirits received in bond from other premises; at the bottom of each Form 1515 covering spirits bottled in bond and returned to the warehouse; and at the bottom of each Form 1685 covering brandy blended in brandy-blending tanks and returned to the warehouse, and such forms shall be filed separately by form number in chronological order.

(68A Stat. 644; 26 U. S. C. 5241)

§ 225.1103 *Files and records covering withdrawals.* When spirits are to be withdrawn, the storekeeper-gauger shall, upon presentation of the proper withdrawal form by the proprietor, secure from his file the Form 1520, 1619, or 1620, covering the deposit of the spirits, including blended brandy returned to the storage portion of the warehouse from the brandy-blending department, and shall verify the details of entry gauge transcribed to the withdrawal form. The storekeeper-gauger shall at that time enclose by red line blocking on the entry Form 1520, 1619, or 1620, the packages or cases to be withdrawn and shall, above a diagonal red line drawn through the block, enter the current date. Upon withdrawal of the spirits, the storekeeper-gauger shall indicate below the diagonal red line within the block on the entry Form 1520, 1619, or 1620, the number of packages withdrawn and the date and purpose of the withdrawal and in the margin of the form, immediately adjacent to the block, the total original tax gallons of the packages or cases withdrawn. He shall also make the necessary entries covering the withdrawal on Form 1621, and shall enter the date of withdrawal at the bottom of the retained copies of the withdrawal forms and applications. When, at the time of entering this information on the entry Form 1520, 1619, or 1620, examination of the form discloses that all the packages or cases covered by the form have been removed, the storekeeper-gauger shall compare the totals of the spirits entered for deposit with the totals of the spirits withdrawn for the purpose of determining the existence of any errors in trans-

actions involving items covered by the particular form. When a storage tank is emptied the storekeeper-gauger shall note in red on the Forms 1520 covering the spirits deposited therein during any one distilling season, the date the tank was emptied and remove the Forms 1520 to an inactive file.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.1104 *Retention of records.* Each Form 1520, 1619, or 1620, covering the deposit of the spirits shall be retained in the active binder until all spirits covered by the form have been withdrawn, at which time such form shall be removed and filed in the same order in an inactive file. Each binder shall be appropriately marked to show the kind of forms it contains and the period covered thereby. The binders for packages received from the distillery on the same or contiguous premises, packages filled from storage tanks, packages of blended brandy filled in the brandy-blending department, and cases bottled at the warehouse shall also have shown thereon the serial numbers of the packages or cases. Where a change in proprietorship of the warehouse occurs, the files of all deposit and withdrawal forms shall be retained and continued in connection with the transactions of the successor.

(68A Stat. 606; 26 U. S. C. 5023)

§ 225.1105 *Withdrawals from storage tanks.* When spirits warehoused in storage tanks are withdrawn therefrom, either for immediate withdrawal from warehouse or for storage in packages in the warehouse, the storekeeper-gauger will note on Form 1621, covering the tank from which withdrawn, the date and the quantity withdrawn. Where the spirits are drawn into packages for storage in the warehouse, the storekeeper-gauger will enter the deposit of the packages on Form 1621 and note the date of deposit at the bottom of Form 1520, covering the gauge of the packages. Where the spirits are drawn into packages or tank cars or tank trucks for withdrawal from warehouse, the storekeeper-gauger will note the date of withdrawal at the bottom of the retained copies of the withdrawal forms and applications.

(68A Stat. 634; 26 U. S. C. 5194)

§ 225.1106 *Filing of withdrawal forms and applications.* The copies of the reports of the withdrawal gauge, Form 1520, the reports of removal for transfer in bond, Form 1619 or 1620, or the application for taxpaid and withdrawal of bottled-in-bond spirits, Form 1519, as the case may be, retained by the storekeeper-gauger, shall be filed separately by form number in chronological order, according to the date of withdrawal noted on the bottom of the forms. The storekeeper-gauger's copies of withdrawal applications, Forms 179, 206, 236, 257, 573, 1515, and 1685, and of permit, Form 1508, will be filed separately by form number, in chronological order, in the same manner as the withdrawal forms. The withdrawal reports and applications for each month shall be separated in the file by proper markers and each file shall be appropriately

marked to show the kind of forms contained therein and the period covered thereby.

(68A Stat. 606; 26 U. S. C. 5023)

SUBPART UU—STOREKEEPER-GAUGER'S REPORTS

§ 225.1110 *Storekeeper-gauger's daily report.* The storekeeper-gauger will prepare a daily report, Form 1699, in duplicate. Entries will be made in accordance with the headings of the columns and lines on the form and in accordance with instructions issued in respect thereto. The original shall be submitted to the assistant regional commissioner with the forms covering the daily transactions at the warehouse. The storekeeper-gauger will retain the duplicate in the Government office.

§ 225.1111 *Preparation of monthly report.* The storekeeper-gauger in charge of every internal revenue bonded warehouse shall prepare a monthly report on Form 1513, in duplicate, of all distilled spirits deposited in, withdrawn from, and remaining in the warehouse. All information indicated by the headings of the columns and lines and the instructions printed on the form and required by this part or issued pursuant thereto shall be entered on the form. The report shall be kept in bound form available for inspection by internal revenue officers.

(68A Stat. 606, 644; 26 U. S. C. 5023, 5241)

§ 225.1112 *Filing monthly report.* The storekeeper-gauger will forward the original of the monthly report to the assistant regional commissioner on or before the 5th day of the month succeeding that for which rendered.

(68A Stat. 644; 26 U. S. C. 5241)

SUBPART VV—RECORDS AND REPORTS OF PROPRIETOR

§ 225.1120 *Record of removals from warehouse, Form 52C.* Every proprietor of an internal revenue bonded warehouse shall keep a daily record on Form 52C, of all bulk and bottled-in-bond distilled spirits removed from the warehouse. Entries will be made as indicated by the headings of the columns and lines and as required by the instructions printed thereon or issued in respect thereto and by this part.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1121 *Record of sales at taxpaid premises, Form 52E.* Every proprietor of an internal revenue bonded warehouse, who maintains taxpaid premises at which taxpaid distilled spirits are received, stored, and sold in bulk, shall keep Form 52E, of all spirits, both bulk and bottled, received and disposed of at his taxpaid premises: *Provided,* That, if such proprietor so desires, he may keep Form 52E for bulk spirits only and Record 52, for bottled spirits only. Where only bottled distilled spirits are received, stored and sold at such taxpaid premises, the proprietor shall keep Record 52 of all such spirits received and disposed of at his taxpaid premises. By taxpaid premises is meant the "taxpaid" or "free" warehouse or room maintained in conjunction with the internal revenue bonded warehouse, or premises maintained at other locations for the receipt,

storage, and disposition of taxpaid spirits. Separate records must be kept at each of such premises.

(68A Stat. 619; 26 U. S. C. 5114)

§ 225.1122 *Record of warehouse receipts to be kept by warehouseman.* Every proprietor of an internal revenue bonded warehouse who sells, or offers for sale, distilled spirits by warehouse receipts shall keep a separate record, and render a monthly transcript, of all purchases and sales of warehouse receipts on Form 52F. There need not be entered on Form 52F transactions in warehouse receipts not involving the purchase or sale of distilled spirits, such as the issuance by the warehouseman of warehouse receipts covering the deposit or bottling of spirits in his warehouse or the receipt of warehouse receipts surrendered for the bottling of the spirits in bond or their transfer in bond to another warehouse. Entries on Form 52F shall be made as indicated by the headings of the columns and lines of the form and in accordance with the instructions printed thereon or issued in respect thereto and as required by this subpart. The provisions of § 225.1124 with respect to the time of making entries, and of § 225.1131 with respect to forms to be provided by users, are hereby made applicable to Form 52F. The provisions of § 225.1125 with respect to a separate record of serial numbers of cases are hereby made applicable to Form 52F with respect to serial numbers of packages and cases purchased or sold by warehouse receipts. The monthly transcript on Form 52F shall be forwarded to the assistant regional commissioner on or before the 10th day of the succeeding month. The physical removal of distilled spirits from the internal revenue bonded warehouse shall continue to be reported on Form 52C in accordance with the provisions of § 225.1120. The physical receipt and disposition of distilled spirits at taxpaid premises shall continue to be reported on Form 52E or Record 52, as the case may be, in accordance with the provisions of § 225.1121.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1123 *Place where Form 52F shall be kept.* Every proprietor of an internal revenue bonded warehouse shall keep Form 52F at the place of business where warehouse receipts are sold or offered for sale.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1124 *Time of making entries.* Daily entries shall be made on Record 52 and Forms 52C and 52E, as indicated by the headings of the various columns and in accordance with instructions printed on the forms before the close of the business day next succeeding the day on which the transactions occur. Where the proprietor of taxpaid premises defers the making of entries to the next business day, he shall maintain a separate record, such as invoices, of the removals of distilled spirits showing the removal data required to be entered on Record 52 or Form 52E, and appropriate memoranda of other transactions required to be entered on such records for

the purpose of correctly making the entries. Where the making of the entries on Form 52C is deferred to the next business day, the proprietor of the internal revenue bonded warehouse shall maintain appropriate memoranda for the purpose of making the entries correctly.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1125 *Separate record of serial numbers of cases.* Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52 or Form 52E, provided the proprietor keeps in his place of business a separate record, approved by the assistant regional commissioner, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of two years and in such a manner that the required information may be ascertained readily therefrom and during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor, whose separate record has been approved by the assistant regional commissioner, shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority, dated -----"

(68A Stat. 619; 26 U. S. C. 5114)

§ 225.1126 *Reports.* Except as otherwise provided in this section, the proprietor shall file, daily, full and complete transcripts of Record 52 and Forms 52C and 52E (Parts 1 and 2) on Forms 52A, 52B, 52C and 52E (Parts 1 and 2) with the assistant regional commissioner, by delivering or mailing them to such officer on the date the transactions entered therein occurred or before the close of the business day next succeeding the day on which the transactions occurred: *Provided,* That in any case in which the assistant regional commissioner shall direct, the transcripts shall be so filed with the investigator in charge instead of with the assistant regional commissioner. The transcripts shall bear the following certification signed by the person or officer authorized to execute Form 338, 52C, or 52E:

I hereby certify that these transcripts, consisting of ----- pages, disclose all the transactions which occurred during the period covered thereby, and that each entry is correct.

If in any case, the assistant regional commissioner shall so authorize, the transcripts, in lieu of being filed daily, may be filed with him on or before the 10th day of the month succeeding the month in which the transactions in dis-

tilled spirits occurred. In such event, transactions will be entered on Record 52, Form 52C and Form 52E in accordance with the provisions of § 225.1124. Monthly summary reports on Form 338 (where Record 52 is kept) and Form 52E (Part 3) shall be prepared in duplicate, one copy of which will be retained on file and the original forwarded to the assistant regional commissioner on or before the 10th day of the month succeeding the month in which the transactions in distilled spirits occurred. The proprietor shall also file a monthly report on Part 2 of Form 52C, in duplicate, with the assistant regional commissioner on or before the 10th day of the succeeding month. Records kept on Record 52 and Forms 52C and 52E shall be preserved for a period of 2 years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by the assistant regional commissioner and other duly authorized internal revenue officers.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1127 *Payment of tax, bottling charge, etc., by third party.* The proprietor of an internal revenue bonded warehouse shall report, on Form 52C, when Record 52 is kept, on Part 2 and on transcript, Form 52B, and when Form 52E is kept, on Part 2, the name and address of each consignee, in the column now designated "Name." In the column now designated "Address," there will be reported the name and address of the person, firm or corporation paying (by advancement or reimbursement) either tax, bottling charge, brokerage fee, handling charge, or clearance fee, indicating which are included. The heading of both columns will be amended accordingly.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1128 *Order by third party to ship or deliver distilled spirits.* Where the proprietor of an internal revenue bonded warehouse ships or delivers distilled spirits to a consignee on the order of another wholesale liquor dealer, detailed records of the transactions shall be kept (a) on Form 52C by the proprietor of the internal revenue bonded warehouse making the shipment or delivery, (b) on Record 52 by the wholesale liquor dealer giving the order, and (c) on Record 52 by the consignee if he is a wholesale liquor dealer. For example, assuming that the proprietor of internal revenue bonded warehouse (A) ships or delivers the distilled spirits to consignee (C) on the order of wholesale dealer (B), entries will be made on the prescribed forms as follows:

(1) The proprietor of the internal revenue bonded warehouse (A) will show in his Form 52C the name and address of wholesale dealer (B) who ordered the distilled spirits, as well as the name and address of consignee (C), the person to whom the distilled spirits are actually shipped or delivered;

(2) Wholesale dealer (B) will show in his Record 52 that the distilled spirits were purchased from warehouseman (A), giving both the name and address of (A), and will at the same time make

an entry showing that the distilled spirits were shipped or delivered by (A) to consignee (C) giving the name and address of (C); and

(3) Consignee (C). If a wholesale liquor dealer, will show in his Record 52 that the distilled spirits were purchased from wholesale dealer (B) and received by him from the proprietor of internal revenue bonded warehouse (A), giving name and address of both. A copy of Form 52C and transcripts of Record 52 on Forms 52A and 52B, required to be filed with the assistant regional commissioner, will similarly show the details of such transactions. Where the proprietor of an internal revenue bonded warehouse keeps Record 52, or Form 52E, and is a party to transactions similar to those described in this section, he shall make similar entries of such transactions in Record 52, or Form 52E, as the case may be; and the transcripts on Forms 52A and 52B, or Form 52E, respectively, required to be filed with the assistant regional commissioner, will likewise show the details of the transactions.

(68A Stat. 619, 637; 26 U. S. C. 5114, 5197)

§ 225.1129 *Record, Part 1, Form 1606.* Every proprietor who has in his possession strip stamps will keep a record of such stamps received and used on Part 1 of Form 1606. Entries will be made on Form 1606 daily, as indicated by the headings of the various columns and lines on the form, and in accordance with the instructions printed thereon or issued in respect thereto, and as required by this part. A separate record on Part 1, marked "Export", will be kept for export strip stamps. The record will be kept in bound form, available for inspection by internal revenue officers.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1130 *Monthly report, Part 2, Form 1606.* The proprietor shall prepare a monthly summary report on Part 2 of Form 1606, in duplicate. He shall deliver Part 2 of Form 1606 to the internal revenue officer for verification of the monthly inventories of stamps on hand. After such verification the internal revenue officer will return both copies to the proprietor who will, on or before the 5th day of the month succeeding the month in which the transactions occurred, forward the original to the assistant regional commissioner and retain the remaining copy, available for inspection by internal revenue officers. A separate report on Part 2 marked "Export" will be rendered for export strip stamps.

(68A Stat. 602; 26 U. S. C. 5008)

§ 225.1131 *Forms to be provided by users.* Record 52, and Forms 52A, 52B, 52C, 52E, 52F, and 338, will be provided by users at their own expense, but must be in the form prescribed by the Director, Alcohol and Tobacco Tax Division: *Provided*, That with the approval of the Director, Alcohol and Tobacco Tax Division, they may be modified to adapt their use to tabulating or other mechanical equipment: *Provided further*, That where the form is printed in book form, including looseleaf books, the instruc-

tions may be printed on the cover of the flyleaf of the book instead of on the individual form.

§ 225.1132 *Record and report of transactions at off-premises export storage room.* Every proprietor of an internal revenue bonded warehouse who maintains an off-premises export storage room at which taxpaid distilled spirits and wines bottled or packaged especially for export are held pending exportation or use as supplies on vessels or aircraft shall keep a record of all such products received and disposed of. The transactions shall be recorded on the date on which they occur and a summary made at the end of the month. A transcript of the record shall be prepared and forwarded to the assistant regional commissioner on or before the 10th day of the succeeding month. Form 52E shall be used upon modification of the title of the form and headings of the columns to serve the purpose, in preparing such record and report.

(68A Stat. 614; 26 U. S. C. 5062)

SUBPART WW—SEMIANNUAL REPORTS OF SPIRITS IN WAREHOUSES

§ 225.1140 *Storekeeper-gauger's report.* The storekeeper-gauger shall prepare a report, in triplicate, on Form 332, by kinds, seasons, and years of production, of stocks of distilled spirits on deposit in the internal revenue bonded warehouse at the close of business on June 30 and December 31 of each year. Form 332 shall be prepared as indicated by the headings of the columns and lines and in accordance with the instructions printed on the form or issued in respect thereto and by this part. In the case of blended brandy the season and year of the oldest brandy in the blend shall be considered the season and year of the blended brandy. The original and one copy will be forwarded to the assistant regional commissioner on or before the fifth day of the month succeeding the date for which the report was prepared, and the remaining copy shall be retained in the office of the storekeeper-gauger at the warehouse.

§ 225.1141 *Assistant regional commissioner's report.* Each assistant regional commissioner shall prepare a summary report, in duplicate, on Form 332, by kinds, seasons, and years of production of distilled spirits in internal revenue bonded warehouses at the close of business on June 30 and December 31 of each year, for each State within his region. Form 332 shall be prepared as indicated by the headings of the columns and lines and in accordance with the instructions printed on the form or issued in respect thereto and by this part. The original of the summary report on Form 332 with the originals of the Forms 332 submitted by storekeeper-gaugers for each internal revenue bonded warehouse within the State shall be forwarded to the Director, Alcohol and Tobacco Tax Division, not later than the last day of the month succeeding the date for which the report was rendered. The duplicate copies of Form 332 shall be retained by the assistant regional commissioner.

SUBPART XX—CONCERNING LOCKS AND SEALS

§ 225.1150 *General.* Except as otherwise provided in this part, the Director, Alcohol and Tobacco Tax Division, will furnish, at the expense of the United States, all Government locks and seals to be used at internal revenue bonded warehouses. Assistant regional commissioners will see that internal revenue bonded warehouses in their respective regions are fully equipped with locks in good condition, and that the necessary seals are provided for seal locks. Assistant regional commissioners will bear in mind that Government locks are required on all doors in the warehouse, including the bottling-in-bond department; on all shutters opening onto fire escapes; on all openings in storage, gauging and bottling tanks, and on the control valves of pipelines which convey spirits to and from tanks; and on the ends of pipelines used to convey spirits to and from the warehouse.

§ 225.1151 *Seal locks.* Seal locks will be used on the entrance door of the bonded warehouse; on the entrance doors of the bottling-in-bond rooms; on the door of the Government room, vault, or cabinet; and on such other places where the use of seal locks is required by this part or deemed necessary by the assistant regional commissioner.

§ 225.1152 *Plain locks.* Plain locks will be used at all other places in the bonded warehouse where locks are required by the provisions of this part.

§ 225.1153 *Custody of locks, keys, and seals.* Storekeeper-gaugers are strictly prohibited from entrusting locks, keys, or seals in their charge to any person other than an internal revenue officer entitled to receive them, and under no circumstances will they permit locks to remain open, whether hanging by the shackle or otherwise.

§ 225.1154 *Cap seals.* All unions, flanges, and other connections in pipelines installed for the entry of spirits into warehouse tanks and the withdrawal of spirits from such tanks, which connections are not welded or brazed or otherwise secured, must be securely connected and sealed with seals approved by the Director, Alcohol and Tobacco Tax Division. A special type of seal, serially numbered, has been approved for such use. This seal has, for the purpose of identification, been designated a "Cap" seal.

§ 225.1155 *Breaking of sealed connections prohibited.* Sealed connections must not be broken by the proprietor for any reason, except in cases of emergency and then only after notifying the storekeeper-gauger in charge or the assistant regional commissioner. Where the proprietor desires to make changes in the equipment involving the breaking of a sealed connection he will follow the procedure prescribed in § 225.262.

§ 225.1156 *Removal of cap seals.* Except as provided in § 225.1155, cap seals which have been affixed will be removed only by a storekeeper-gauger or some other officer designated for the purpose by the assistant regional commissioner.

The officer will destroy all removed cap seals in a manner sufficient to prevent their reuse.

SUBPART YY—SAFEGUARDING GOVERNMENT PROPERTY

§ 225.1160 *Storage in Government room, vault, or cabinet.* Government seals, locks not in use, the internal revenue officer's records, and other Government property when not in use, shall be kept in a Government room, vault, or cabinet which shall be locked with a Government seal lock, the key to which at all times shall remain in the possession of the storekeeper-gauger. The storekeeper-gauger must not leave the room, vault, or cabinet open except in his immediate presence, nor give the key thereof to anyone except another internal revenue officer authorized to receive it. Where it is necessary to open the room, vault, or cabinet at various times during the day, the lock will not be seal-locked until the close of business.

SUBPART ZZ—MISCELLANEOUS PROVISIONS

VARIATION FROM REQUIREMENTS

§ 225.1170 *Exceptions to construction and equipment requirements.* The Director, Alcohol and Tobacco Tax Division,

may approve details of construction and equipment in lieu of those specified in this part where it is shown that it is impracticable to conform to the prescribed specifications, and the proposed construction and equipment will afford as much or more security and protection to the revenue as is intended by the specifications prescribed in this part, and where such variations will not be contrary to any provision of law. Where it is proposed to substitute construction and equipment for that for which specifications are prescribed, prior approval must be obtained in accordance with the provisions of § 225.1172.

(68A Stat. 680; 26 U. S. C. 5552)

§ 225.1171 *Exceptions to methods of operation.* The Director, Alcohol and Tobacco Tax Division, may, in case of emergency, approve methods of operation other than those provided for by this part, where it is shown that variations from the requirements are necessary, will not hinder the effective administration of this part, will not jeopardize the revenue, and where such variations are not contrary to any provisions of law. Where it is proposed to employ methods of operations other than those provided for by this part, prior approval

must be obtained in accordance with the provisions of § 225.1172.

(68A Stat. 680; 26 U. S. C. 5552)

§ 225.1172 *Application.* A proprietor who proposes to employ methods of operations or construction or to install equipment other than as provided in this part, shall submit a letterhead application so to do, in triplicate, to the assistant regional commissioner. Such application shall describe the proposed variations and state the need therefor. Where variations in construction and equipment cannot be adequately described in the application, drawings or photographs shall also be submitted. The assistant regional commissioner will make such inquiries as are necessary to determine the necessity for the variations and whether approval thereof will hinder the effective administration of this part or result in jeopardy to the revenue. On completion of the inquiry, the assistant regional commissioner will forward two copies of the application to the Director, Alcohol and Tobacco Tax Division, together with a report of his findings and his recommendation.

[F. R. Doc. 54-9868; Filed, Dec. 10, 1954; 11:22 a. m.]

[26 CFR (1954) Part 235]

RECTIFICATION OF SPIRITS AND WINES

NOTICE OF PROPOSED RULE-MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington 25, D. C., within the period of 15 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL] JUSTIN F. WINKLE,
Acting Commissioner
of Internal Revenue.

PART 235—RECTIFICATION OF SPIRITS AND WINES

Preamble: 1. The regulations in this part shall, as to facts and circumstances arising on and after January 1, 1955, supersede Regulations 15, 1950 Edition (26 CFR Part 190 (1939); 15 F. R. 4790); and Treasury Decisions 5809 (15 F. R. 6856), 5870 (16 F. R. 12427), 5895 (17 F. R. 3644), 5912 (17 F. R. 5502), 5919 (17 F. R. 6639), 5995 (18 F. R. 1179), 5996 (18 F. R. 1179), 6005 (18 F. R. 2139), 6032 (18 F. R. 4401), 6049 (18 F. R. 7173), 6062 (19 F. R. 732), 6075 (19 F. R. 4025), and 6097 (19 F. R. 5577).

2. These regulations shall not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

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AUTHORITY: §§ 235.1 to 235.915 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Other statutory provisions interpreted or applied are cited to text in parentheses.

SUBPART A—SCOPE OF REGULATIONS

§ 235.1 *Rectification of spirits and wines.* The regulations in this part, relating to the rectification of distilled spirits and wines, cover requirements governing the location, construction, equipment, qualifying documents, changes in premises, equipment and proprietorship; action by the assistant regional commissioner; operation and

supervision of the rectifying plant; the receipt, dumping, rectification, bottling, rebottling, packaging, stamping, re-stamping, labeling, and relabeling of spirits; removal of spirits from the rectifying plant; and records and reports of operations at rectifying plants.

§ 235.2 *Forms prescribed.* The Director, Alcohol and Tobacco Tax Division, is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns and records. Information called for shall be furnished in accordance with the instructions printed on the forms or issued in respect thereto.

SUBPART B—DEFINITIONS

§ 235.4 *Meaning of terms.* As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

§ 235.5 *Assistant regional commissioner.* "Assistant regional commissioner" shall mean the assistant regional commissioner, Alcohol and Tobacco Tax, who is responsible to and functions under the direction and supervision of the regional commissioner of internal revenue.

§ 235.6 *Commissioner.* "Commissioner" shall mean the Commissioner of Internal Revenue.

§ 235.7 *Director, Alcohol and Tobacco Tax Division.* "Director, Alcohol and Tobacco Tax Division" shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington, D. C.

§ 235.8 *Distilled spirits.* "Distilled spirits" shall mean all the substances produced by the distillation of fermented grain, molasses, or other materials, commonly known as spirits, whisky, rum, gin, brandy, vodka, alcohol, etc.

§ 235.9 *District director.* "District director" shall mean the district director of internal revenue of the internal revenue district in which the rectifying plant is located.

§ 235.10 *Gallon.* "Gallon" or "wine gallon" shall mean a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

§ 235.11 *Including.* The word "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.

§ 235.12 *Inclusive language.* Words in the plural form shall include the singular, and vice versa, and words in the masculine gender shall include females, associations, partnerships, and corporations.

§ 235.13 *I. R. C.* "I. R. C." shall mean the Internal Revenue Code of 1954.

§ 235.14 *Person.* "Person" shall include natural persons, associations, partnerships, and corporations.

§ 235.15 *Proof.* "Proof" shall mean the ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

§ 235.16 *Proof gallon.* "Proof gallon" shall mean the alcoholic equivalent

of a United States gallon at 60 degrees Fahrenheit, containing 50 percent of ethyl alcohol by volume.

§ 235.17 *Proof spirits*. "Proof spirits" shall mean that alcoholic liquor which contains 50 percent of ethyl alcohol by volume at 60 degrees Fahrenheit and which has a specific gravity of 0.93418 in air at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

(68A Stat. 597; 26 U. S. C. 5002)

§ 235.18 *Proprietor*. "Proprietor" shall mean the proprietor of the rectifying plant, unless otherwise indicated.

§ 235.19 *Rectification*. "Rectification" shall mean any act constituting rectification as defined in section 5082 I. R. C., and in this part.

§ 235.20 *Rectified spirits*. "Rectified spirits" shall mean all the products of rectification.

§ 235.21 *Rectifier*. "Rectifier" shall mean the proprietor of a rectifying plant.

§ 235.22 *Red strip stamps*. "Red strip stamps" shall mean the stamps prescribed under authority of section 5008 (b) (2), I. R. C.

§ 235.23 *Secretary*. "Secretary" shall mean the Secretary of the Treasury.

§ 235.24 *Spirits*. "Spirits" shall mean distilled spirits, wines, cordials, liqueurs, etc., except where otherwise indicated.

§ 235.25 *Tank car*. "Tank car" shall mean a railroad tank car and, for the purpose of receiving taxpaid distilled spirits, shall include a tank truck in accordance with the applicable provision of Parts 210, 220, 221 and 225 of this title.

§ 235.26 *Taxpaid spirits*. "Taxpaid spirits" shall mean those alcoholic beverages on which the tax has been determined as well as those on which the tax has actually been paid.

§ 235.27 *U. S. C.* "U. S. C." shall mean the United States Code.

§ 235.28 *Wines*. "Wines" shall mean all kinds and types of wine, produced by the fermentation of fruits, berries, or other suitable agricultural products, and all artificial or imitation wines or compounds sold as wine.

SUBPART C—PERSONS REQUIRED TO QUALIFY AS RECTIFIERS

§ 230.35 *General*. Except as provided in §§ 235.36 through 235.44 any person who rectifies, purifies, or refines distilled spirits or wines, or who, by mixing such spirits or wines with each other, or with any materials, manufactures any spurious, imitation, or compound liquor for sale, and every wholesale or retail liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, is a rectifier and must qualify as such.

(68A Stat. 616; 26 U. S. C. 5082)

EXCEPTIONS

§ 230.36 *Distillers*. Distillers who rectify, purify, or refine distilled spirits by original and continuous distillation

from mash, wort, or wash through continuous, closed vessels and pipes until the manufacture thereof is complete, or who purify or refine spirits in the course of original and continuous distillation through any materials which will not remain incorporated with such spirits when the manufacture thereof is complete are not required to qualify as rectifiers.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.37 *Producers of absolute alcohol*. Persons who produce absolute alcohol by the process of extraction of water from high-proof spirits are not required to qualify as rectifiers.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.38 *Proprietors of bonded wineries or wine cellars*. Proprietors of bonded wineries or bonded wine cellars, who mix or blend untaxpaid wines for the sole purpose of perfecting such wines according to commercial standards, or who filter, clarify, or purify wines on bonded winery and bonded wine cellar premises and also proprietors of bonded wineries who manufacture vermouth with fortified sweet wine on bonded winery premises are not required to qualify as rectifiers.

(68A Stat. 607, 672; 26 U. S. C. 5025, 5391)

§ 235.39 *Proprietors of taxpaid bottling houses*. Proprietors of taxpaid bottling houses or taxpaid wine bottling houses who mix together wines of the same type, kind and taxable grade solely for convenience in handling or for purposes of preservation, filtration or clarification are not required to qualify as rectifiers.

(68A Stat. 607, 685; 26 U. S. C. 5025, 5363)

§ 235.40 *Manufacturers of alcoholic compounds*. Persons who manufacture alcoholic compounds which are declared by the Director, Alcohol and Tobacco Tax Division, to be unfit for use for beverage purposes are not required to qualify as rectifiers. (See Subpart D of this part.)

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.41 *Apothecaries*. Apothecaries who use wines or spirituous liquors exclusively in the preparation or making up of medicines unfit for use for beverage purposes are not required to qualify as rectifiers.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.42 *Manufacturing chemists*. Manufacturing chemists or flavoring extract manufacturers who recover taxpaid alcohol or spirituous liquors from dregs or marc of percolation, if such recovered alcohol or spirituous liquors be again used in the manufacture of medicines or flavoring extracts of the kind in the production of which originally used are not required to qualify as rectifiers.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.43 *Alcohol plants and bonded warehouses*. Alcohol plants and alcohol bonded warehouses established and operated under chapter 51, I. R. C., and regulations issued pursuant thereto are not required to qualify as rectifiers.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.44 *Retail liquor dealers*. Retail liquor dealers who mix drinks, after orders have been received therefor, for consumption on the premises where sold are not required to qualify as rectifiers.

SUBPART D—PRODUCTS UNFIT FOR BEVERAGE USE

PRODUCTS EXEMPT FROM SPECIAL AND COMMODITY TAXES

§ 235.50 *U. S. P., N. F., and H. P. U. S. preparations*. Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, the National Formulary, or the Homeopathic Pharmacopoeia of the United States, that are unfit for use for beverage purposes are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.51 *Patent medicines*. Patented, patent, and proprietary medicines that are unfit for use for beverage purposes are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.52 *Toilet preparations*. Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.53 *Flavoring extracts*. Flavoring extracts, sirups, and concentrates that are unfit for use as beverages or for intoxicating beverage purposes, or flavoring extracts which conform to the requirements of the Food and Drug Administration, United States Department of Agriculture, are held to be unfit for use for beverage purposes and are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.54 *Laboratory reagents*. Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.55 *Salted wines*. Salted wines which contain not in excess of 21 percent alcohol by volume and not less than 1.5 grams of salt per 100 cubic centimeters are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.56 *Sauces*. Sauces or sirups consisting of sugar solutions and intoxicating liquors in which the alcohol does not exceed 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.57 *Brandied fruits*. Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and only sufficient liquor for flavoring and preserving are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.58 *Food products*. Food products such as mincemeat, plum pudding, and fruit cake where only sufficient liquor is used for flavoring and preserving; and ice cream and ices where only

sufficient liquor is used for flavoring purposes are considered as meeting the requirements for exemption from special and commodity taxes.

§ 235.59 *Restrictions.* The products listed in §§ 235.50 through 235.58 must be sold only for non-beverage purposes. Any sale by the manufacturer for beverage purposes, or under such circumstances as would indicate that the manufacturer knew or had reason to believe that the product sold would be used for beverage purposes, will render the manufacturer liable for special and commodity taxes and penalties.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.60 *Formulas and samples.* Manufacturers must submit their formulas and samples of their products to the Director, Alcohol and Tobacco Tax Division, for examination to verify the claim of the manufacturer as to his exemption from tax when requested to do so, or when the manufacturer is in doubt as to the classification of his product.

§ 235.61 *Change of formula.* If the Director, Alcohol and Tobacco Tax Division, shall find at any time that any product manufactured under this subpart as an unfit product exempt from tax is being used for beverage purposes, or for mixing with beverage liquors other than by a rectifier, he shall notify the manufacturer to desist the manufacturing thereof until the formula is so changed as to render the product not susceptible of beverage use and such change is approved by the Director, Alcohol and Tobacco Tax Division: *Provided*, That the provisions of this section shall not be so construed as to prohibit the use of such unfit products in small quantities for flavoring drinks at the time of serving for immediate consumption. Where a formula is not so modified, pursuant to notice to desist, as to render the product unsuitable of beverage use, the manufacturer must immediately qualify as a rectifier and pay the rectification tax.

§ 235.62 *Prohibited manufacture or storage.* None of the products specified in §§ 235.50 through 235.58 may be manufactured or stored at a rectifying plant, except as specifically provided in § 235.63. While rectifiers may use flavors and flavoring extracts on which drawback of tax on the spirits used therein has been allowed under section 5131, I. R. C. and Part 197 of this title, the premises used for manufacturing the flavors or flavoring extracts, if contiguous to the rectifying premises, must be completely separated from the rectifying premises by solid unbroken partitions and the two premises must not have means of communication with each other within the building. The rectifier may not transfer distilled spirits from the rectifying plant to the flavoring extract manufacturing premises or from the flavoring extract plant premises to the rectifying plant notwithstanding that the two premises may be owned and operated by the same person. Distilled spirits used at the flavoring extract manufacturing premises, must be received direct from the vendor and all

records governing the receipt and use of distilled spirits and other ingredients in the manufacture of flavoring extracts must be kept on the flavoring extract manufacturing premises and not on the rectifying premises.

§ 235.63 *Permissible manufacture or storage.* Where flavors or flavoring extracts are manufactured on premises of the rectifying plant, they must be used exclusively in the manufacture of taxable products at such premises and no drawback of tax may be claimed thereon. Nonalcoholic grenadine, or grenadine containing less than one-half of 1 percent of alcohol by volume and sufficient sugar to render it wholly unfit for use for beverage purposes, or other such flavoring materials, may not be manufactured on the premises of a rectifying plant unless they are to be used by the rectifier in making his taxable products.

USE OF ALCOHOLIC FLAVORING MATERIALS

§ 235.64 *Limitation.* The use of alcoholic flavors or flavoring extracts manufactured on premises other than a rectifying plant must be limited by the rectifier, so that the quantity of alcohol (proof gallons) contained therein will not represent more than 2½ percent of the quantity of alcohol (proof gallons) contained in the finished product, except as provided in § 235.65. For example, one hundred gallons of a finished cordial, fifty degrees of proof, contain fifty proof gallons. As 2½ percent of fifty equals 1.25, the cordial could contain not more than 1.25 proof gallons of alcohol derived from such flavors or flavoring extracts used in its manufacture.

§ 235.65 *Exception to limitation.* In any case where the use of flavors or flavoring extracts in quantities in excess of the 2½ percent limitation prescribed in § 235.64 is required, such limitation shall not apply to the use of any flavors or flavoring extracts in excess thereof if the flavoring material used is purchased directly from the manufacturer and, as to each lot of purchased flavors or flavoring extracts containing alcohol, the rectifier has available for examination by the storekeeper-gauger an affidavit of the manufacturer showing: The quantity; the date of manufacture; the kind and brand of each flavor or flavoring extract; and that drawback under section 5131, I. R. C., has not been nor will be claimed on any alcohol or distilled spirits contained in the flavor or flavoring extract.

§ 235.66 *New formulas required.* The manufacture of rectified products in which are used alcoholic flavors or flavoring extracts to an extent not consistent with the provisions of §§ 235.64, 235.65, and 235.347, are prohibited. New formulas, submitted for the purpose of showing the use of alcoholic flavors or flavoring extracts in the manufacture of rectified products, must furnish the information required by § 235.346.

SUBPART E—ALCOHOLIC PREPARATIONS FIT FOR BEVERAGE PURPOSES

§ 235.75 *Classed as rectified liquors.* United States Pharmacopoeia tincture of

ginger is held to be a rectified liquor. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also classed as rectified liquors. Alcoholic preparations so classed must be manufactured in a rectifying plant and the 30-cent rectification tax must be paid thereon. Such preparations must be manufactured, taxpaid, bottled or packaged, stamped, recorded, and disposed of in accordance with the procedure prescribed in this part for other rectified spirits or products. Sellers of such preparations must qualify as wholesale or retail liquor dealers, or both, according to the quantities which they desire to sell. (See Subpart S of this part.)

(68A Stat. 606, 618, 620; 26 U. S. C. 5021, 5111, 5121)

§ 235.76 *Exempt U. S. P. and N. F. preparations.* The following United States Pharmacopoeia and National Formulary preparations which are used by physicians and pharmacists principally as vehicles, and which are capable of beverage use, may be made with alcohol, and sold in good faith for legitimate non-beverage purposes without incurring liability for rectification and special taxes for their manufacture and sale:

Elixir aromaticum.
Elixir aromaticum rubrum.
Elixir aurantii amari.
Elixir cardamom compositum.
Elixir glycyrrhizae.
Elixir taraxaci compositum.
Elixir terpinii hydratis.
Spiritus aetheris.
Spiritus myrsinae compositus.
Tinctura aurantii dulcis.
Tinctura limonis.

SUBPART F—LOCATION AND USE

§ 235.85 *Restrictions.* Rectifying plants for the rectification of distilled spirits or wine may not be located on board of any vessel or boat.

(68A Stat. 627; 26 U. S. C. 5171)

§ 235.86 *Use of premises.* The premises of a rectifying plant shall be used exclusively for the business of rectification and the bottling of liquors rectified thereon, and the bottling of wines and spirits without rectification.

(68A Stat. 650; 26 U. S. C. 5273)

SUBPART G—CONSTRUCTION

§ 235.95 *Building or rooms.* The rectifying plant must be so constructed and equipped as to be suitable for the rectification of spirits by the process, or processes, of rectification which the rectifier proposes to use. The room or building must be securely constructed of brick, stone, wood, concrete, or other substantial material, and must be completely separated from contiguous buildings or rooms by solid, unbroken partitions, or floors of substantial construction, except as provided in this part. Where the rectifying plant is under the same roof or in the same building in which the rectifier or his affiliate or subsidiary operates a taxpaid bottling house, wholesale liquor dealer premises, or another rectifying plant, the assistant regional commissioner may, in his discretion, author-

ize the rectifying plant to be separated from such premises by partitions of expanded metal or woven wire of not less than 9-gauge nor more than 2-inch mesh extending from the floor to the ceiling or roof: *Provided*, That such partitions of expanded metal or woven wire may not be authorized if the taxpaid bottling house operates alternately as a bottling in bond department of an internal revenue bonded warehouse. All partitions shall extend from the ground to the roof, or from the floor to the ceiling if a room is used, and if the rectifying plant is under the same roof or in the same building in which is located an internal revenue bonded warehouse, or a taxpaid bottling house, the two premises must not have means of communication with each other within the building, except by approved pipe lines as authorized in this part: *Provided*, That where a rectifying plant has heretofore been established under the same roof, or in the same building, with an internal revenue bonded warehouse or a taxpaid bottling house with interior communication between the two premises, it may continue to operate in such location if the revenue will not be jeopardized thereby. Where distilled water or taxpaid spirits are to be transferred by pipe line to, or from, the rectifying plant in accordance with this part necessary openings for the passage of the required pipe lines may be permitted in the walls or partitions, and necessary openings for passage of approved water, steam, sewer, or similar lines may likewise be permitted in the walls or partitions. Where contiguous wholesale liquor dealer premises are used in lieu of a finished product room, the necessary doors or openings may be permitted in the walls or partitions.

§ 235.96 Means of ingress and egress. The doors must lead into the yard connected with the rectifying plant or a public street: *Provided*, That where a room is used, the door may open into an elevator shaft, or a common passageway partitioned off from other businesses, leading either directly or through another elevator shaft or similar passageway to the street or yard. The partitions forming a common passageway shall be substantially constructed of solid materials or expanded metal or woven wire of not less than 9-gauge nor more than 2-inch mesh, and shall extend from the floor to the ceiling or roof, but doors may be permitted therein if they do not afford interior communication with an internal revenue bonded warehouse in the same building. Common passageways must be used exclusively as means of communication.

(68A Stat. 650; 26 U. S. C. 5273)

§ 235.97 Doors, windows, and other openings. The doors, windows, and other openings in the room or building comprising the rectifying plant must be so arranged and constructed that they may be securely locked or fastened. No door, window, or other opening will be permitted in the walls or floors leading into another room or building which is not a part of the rectifying plant.

§ 235.98 Division of premises. The division of the rectifying plant into departments, as required by this subpart, shall be effected by securely constructed, solid partitions or by expanded metal or woven wire of not less than 9-gauge nor more than 2-inch mesh. The partitions in all instances shall extend from the floor to the ceiling or roof, or not less than 12 feet from the floor. There may be communicating doors or elevators between the various departments of the rectifying plant, but such departments shall not be separated from each other by intervening businesses. If more than one room is used for the same purpose, such rooms shall be given alphabetical designations, as "A," "B," "C," etc. A sign must be posted over the door to each room indicating its use.

§ 235.99 Receiving room. A room must be provided for the storage of all alcohol, distilled spirits, or wines, received for rectification or for bottling, which room shall be used exclusively for such purpose and shall be designated "Receiving Room": *Provided*, That the assistant regional commissioner may, in his discretion, approve storage tanks meeting the requirements of § 235.123, located in rectifying rooms.

§ 235.100 Rectifying room. A separate room designated "Rectifying Room" must be provided, wherein all operations in connection with the rectification, blending, bottling, etc., of spirits must be conducted. The rectifying room may be further divided as provided in §§ 235.101 through 235.103.

§ 235.101 Quick-aging room. Where a separate room is provided for the treatment of spirits in barrels and kegs for quick-aging purposes, such room shall be designated "Quick-aging Room."

§ 235.102 Champagne room. Where champagne or other sparkling wines are manufactured, a separate room designated "Champagne Room" must be provided therefor, unless the rectifying room is used exclusively for the manufacture of such liquors.

§ 235.103 Wine bottling room. Where it is impracticable to bottle wine and certain cordials and liqueurs from the prescribed bottling tanks, and it is necessary to bottle such products from the original package or from the container in which compounded, the rectifier must provide for such bottling a room to be designated "Wine Bottling Room." Such room shall be constructed of substantial, solid materials, and the doors and other openings must be so constructed that they may be securely locked or fastened from the inside, except the entrance door which must be so constructed that it may be securely locked from the outside of the room with a Government lock.

§ 235.104 Finished products room. A room must be provided by the rectifier for the storage of spirits packaged by him: *Provided*, That if the rectifier conducts no bottling operations whatsoever and his entire production is transferred by pipeline to a contiguous taxpaid bottling house or rectifying plant, or is

transferred by tank car or tank truck to another rectifying plant or to a taxpaid bottling house, or if the rectifier maintains a contiguous wholesale liquor dealer room and removes all spirits thereto immediately upon taxpayment and completion of bottling, a finished products room need not be provided. Where a finished products room is provided, it shall be used exclusively for the purpose specified and shall be designated "Finished Products Room."

§ 235.105 Export storage room. If the rectifier intends to bottle or package distilled spirits or wines for export with benefit of drawback, a separate room for the storage of such products exclusively must be provided and designated "Export Storage Room." The room must be constructed of substantial, solid material: *Provided*, That the partitions separating such room from other parts of the rectifying plant may be constructed of expanded metal or woven wire of not less than 9-gauge nor more than 2-inch mesh, extending from the floor to the ceiling or roof. All windows, door, or other openings must be so constructed that they may be securely locked or fastened from the inside, except the entrance door, which must be so constructed that it may be securely locked from the outside of the room with a Government seal lock.

(68A Stat. 614; 26 U. S. C. 5062)

§ 235.106 Empty container storeroom. If empty barrels, bottles, or other containers are stored within the rectifying plant, they must be segregated from filled containers. If a separate room is provided for such purpose, it will be designated "Empty Container Storeroom."

§ 235.107 Office facilities. The rectifier shall provide and maintain on the rectifying plant premises suitable office facilities, including desk and file cabinet, for the use of internal revenue officers. There shall also be provided a metal cabinet of adequate strength and size, or a securely constructed room or vault, suitably equipped for locking with a Government seal lock, for use in safeguarding the keys to Government locks, seals, and other Government property, in the custody of internal revenue officers. Such facilities shall be subject to approval by the assistant regional commissioner.

SUBPART H—SIGN

§ 235.115 Posting of sign. The rectifier shall place and keep conspicuously on the outside and at the front of the rectifying plant or over the front entrance thereto, where it can be plainly seen, a sign exhibiting in plain and legible letters not less than 3 inches in height and of a proper and proportionate width, the name of the rectifier and the words, "Rectifier of Spirits," and "Plant No. —," using the registry number assigned by the assistant regional commissioner.

(68A Stat. 651; 26 U. S. C. 5274)

SUBPART I—EQUIPMENT

§ 235.120 Scales. All scales used for weighing spirits shall be tested from

time to time by the proprietor by means of test weights or otherwise to insure their accuracy. The rectifier must provide suitable and accurate scales for weighing spirits to be dumped from or drawn into packages. The beams or dials must indicate weight in half-pound graduations.

(68A Stat. 639, 680; 26 U. S. C. 5212, 5552)

§ 235.121 *Weighing tanks.* Where weighing tanks are used for gauging spirits, such tanks shall be constructed of metal, or other suitable material, and shall be stationary. Weighing tanks may be used for gauging rectified spirits for determining the amount of tax, or gauging tax-exempt products prior to transfer of the spirits to a bottling tank, if such weighing tanks conform to the requirements of § 235.129. After such gauging, the spirits must be immediately taxpaid, if subject to the rectification tax, and transferred to a bottling tank. Each weighing tank shall be mounted on accurate scales and shall have plainly and legibly painted thereon the words "Weighing Tank," followed by its serial number and capacity in gallons. The beams or dials of scales must be graduated to enable readings to be made as follows: To the nearest $\frac{1}{2}$ pound for scales having a capacity not to exceed 2,000 pounds; to the nearest 1 pound for scales having a capacity of over 2,000 pounds, but not exceeding 6,000 pounds; to the nearest 2 pounds for scales having a capacity over 6,000 pounds, but not exceeding 20,000 pounds; to the nearest 5 pounds for scales having a capacity over 20,000 pounds, but not exceeding 50,000 pounds; and to the nearest 10 pounds for scales having a capacity over 50,000 pounds. Except in the case of scales having a capacity of 2,000 pounds or less, where spirits are to be gauged for tax-payment, not less than 20 percent of the total capacity of the gauging tank scale may be entered into the tank for gauging for determination of the tax: *Provided*, That the weighing of lesser quantities for determination of tax may be authorized by the assistant regional commissioner where the beam of the scale is calibrated in $\frac{1}{2}$ or 1 pound graduations and it is found by actual test that the scales break accurately at such graduations.

(68A Stat. 639, 680; 26 U. S. C. 5212, 5552)

§ 235.122 *Test weights.* The rectifier shall provide a set of ten 50-pound cast-iron test weights, which shall be certified by the National Bureau of Standards or State departments of weights and measures, as conforming to class "C" requirements of the National Bureau of Standards, and provide a suitable place where the weights may be secured with a Government lock. If the rectifier has provided such test weights at a distillery, internal revenue bonded warehouse, industrial alcohol plant or bonded warehouse, bonded winery, or taxpaid bottling house, operated by him on contiguous or nearby premises, he need not provide a separate set of weights for the rectifying plant. If the rectifier receives and fills only small packages, he may provide only such number of test weights as will

exceed the maximum weight of any such package. All test weights shall be placed under the control and in the custody of the storekeeper-gauger, who shall keep them under Government lock when not in use. In case a scale becomes inaccurate for any reason, the storekeeper-gauger will not permit it to be used while it is in such condition.

§ 235.123 *Storage tanks.* If spirits are received in tank cars or tank trucks, or by pipeline, suitable storage tanks must be provided, except that such storage tanks will not be required in the case of spirits which are transferred directly to processing and bottling tanks in accordance with §§ 235.382 and 235.383. Each storage tank shall be constructed of metal or other suitable material and shall be equipped with a suitable device, or mounted on accurate scales, whereby the contents can be accurately determined. There shall be painted on each tank, or on a sign affixed thereto, the words, "Storage Tank," followed by its serial number and capacity in gallons. A suitable board shall be provided on each storage tank for the attachment of Forms 1520, or 1440, as provided in this part. Manheads and inlets of the tanks must be provided with facilities for locking with Government locks. Stopcocks must be provided and so arranged as to control completely the flow of spirits into the tank: *Provided*, That where spirits are received by pipeline from contiguous premises and the pipeline is equipped with a valve on the contiguous premises, which may be locked with a Government lock, the inlet valve in the receiving rectifying plant is not required to be locked. The construction of the valves must be such that they can be secured with Government locks. However, storage tanks to be used exclusively for the storage of wine and labeled "Wine Storage Tank" need not be secured as provided by this section. A closed manifold system, not equipped for locking with Government locks, may be installed which will permit the transfer of spirits between storage tanks. Storage tanks may be permanently connected with pipelines for the conveyance thereto of air and distilled water, but the distilled water pipeline must be affixed to the top of the tank. Other pipelines, except those used for the conveyance of spirits, may not be permanently connected with such tanks.

(68A Stat. 634, 680; 26 U. S. C. 5194, 5552)

§ 235.124 *Dumping and reducing tanks.* If dumping and reducing tanks are provided, the same shall be located in the rectifying room and shall be equipped with a suitable device whereby the contents can be accurately determined. Each such tank shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words, "Dumping and Reducing Tank," followed by its serial number and capacity in gallons: *Provided*, That where a tank is to be used alternately as a dumping and reducing tank or as a processing tank the tank shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words, "Dumping and Reducing Tank or Processing Tank," fol-

lowed by its serial number and capacity in gallons, and a suitable board shall be provided for the attachment of Form 122.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.125 *Processing tanks.* The rectifier shall provide a sufficient number of processing tanks, which shall be located in the rectifying room. Processing tanks shall be equipped with a suitable device whereby the contents can be accurately determined. Each such tank shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words, "Processing tank," followed by its serial number and capacity in gallons: *Provided*, That where a tank is to be used alternately as a processing tank or as a dumping and reducing tank the tank shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words, "Processing Tank or Dumping and Reducing Tank," followed by its serial number and capacity in gallons. A suitable board shall be provided for the attachment of Form 122. Tanks used for blending, compounding, quick-aging, percolating, etc., will be considered processing tanks and must be so marked. Processing tanks may be used for gauging rectified spirits for determining the amount of tax, or gauging tax exempt products, prior to transfer of the spirits to a bottling tank if such processing tanks conform with the requirements of § 235.129. After such gauging, the spirits must be immediately taxpaid, if subject to the rectification tax, and be removed from the processing tank.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.126 *Processing receptacles.* Where barrels or other similar containers are used for rectifying, each such receptacle shall be marked with the words, "Processing receptacle," followed by its serial number and capacity in gallons. Such receptacles must be so constructed and located that the contents thereof may be readily determined by internal revenue officers. Provision shall be made on each processing receptacle for the attachment of Form 122. Open bowls, similar to crocks and jars used for macerating, in which spirits are held for a short time during the process of mixing, must be designated "Processing Receptacle," and be located in the rectifying room.

§ 235.127 *Receiving tanks.* Where rectified products are produced by redistillation, such as gin or cordials, or where spirits are redistilled, the rectifier must provide a requisite number of receiving tanks. Where vodka is produced, a receiving tank or tanks may be provided therefor, if desired. Each receiving tank shall be constructed of metal or other suitable material and equipped with a suitable device whereby the contents can be accurately determined. Manheads and inlets of such tanks must be provided with facilities for locking with Government locks. Each tank shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words indicating its use, as "Gin Receiving Tank," "Cordial Receiving Tank," "Heads and Tails Receiving Tank," "Vodka Receiving Tank," etc., followed

by its serial number and capacity in gallons. Receiving tanks must be located in the rectifying room.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.128 Quick-aging packages. Where spirits are treated in barrels or kegs for quick-aging or other purposes, each such package shall be marked "Quick-aging package," followed by its serial number and capacity in gallons. Quick-aging packages must be located in the rectifying room or in the quick-aging room, if one has been provided.

§ 235.129 Bottling tanks. Where spirits are bottled at the rectifying plant, the rectifier shall provide in the rectifying room, or bottling room if one is provided, one or more bottling tanks securely constructed of metal or other suitable material. Each bottling tank shall be mounted on accurate scales, or equipped with a suitable device whereby the actual contents will be accurately and precisely indicated, and shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words "Bottling tank," followed by its serial number and capacity in gallons. A suitable board shall be provided on each bottling tank for the attachment of Forms 237 and 230. Each bottling tank must be closed, and any necessary openings therein affording access to the interior, or to the contents, must be closed and secured with a cover, which may be secured by a Government lock or otherwise fastened and sealed. Stopcocks must be provided and so arranged as to completely control the flow of spirits both into and out of the bottling tank, and so constructed that they may be locked with a Government lock. The pipe connections containing such stopcocks or valves must be brazed, welded, or otherwise secured to the tank in such a manner that they cannot be detached or altered without showing evidence of tampering, and the outlet pipe connections on bottling tanks shall be equipped with check valves. The pipeline connecting the bottling tanks with the bottling machine must conform to the requirements of § 235.137. Bottling tanks may be permanently connected with pipelines for the conveyance thereto of air and distilled water, but the distilled water pipeline must be affixed to the top of the tank. Such pipelines must be equipped with a control valve which may be locked with a Government lock. Pipelines used for the conveyance of air must also be equipped with a check valve located near the point of entry to the tank in order to effectively prevent any abstraction of spirits from the tank. Other pipelines, except those used for the conveyance of spirits, may not be permanently connected with such tanks. Bottling tanks shall be accurately and precisely calibrated. Bottling tanks may not be used prior to their approval under this section.

§ 235.130 Special bottling tanks. Where highly aromatic liquors, such as anisette and crème de menthe, are produced and bottled, and a special bottling tank is necessary for the bottling thereof, the rectifier may provide in the rectify-

ing room or bottling room one or more small bottling tanks suitable for such purpose. Such special bottling tanks must be constructed, arranged, and secured as provided by § 235.129 in the case of regular bottling tanks, and each special bottling tank shall have plainly and legibly painted thereon or on a sign affixed thereto, the words, "Special Bottling Tank," followed by its serial number and capacity in gallons.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.131 Package filling tanks. Where distilled spirits or wines are to be packaged especially for export with benefit of drawback, tanks suitable for the purpose, and constructed and equipped in accordance with the provisions and requirements of § 235.129 governing the construction and equipment of bottling tanks, shall be provided by the rectifier. The bottling tank may be used as the package filling tank, provided it is equipped with an approved outlet for filling packages.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.132 Gravity tanks. The rectifier may, if necessary, install a small gravity tank between the bottling tanks and bottling machine, for the purpose of maintaining a constant head pressure or to afford a gravity flow to the bottling machine. The capacity of the gravity tank shall be no larger than necessary. Gravity tanks must be equipped with a suitable device whereby the contents can be accurately determined, and each such tank shall have plainly and legibly marked thereon, or on a sign affixed thereto, the words, "Gravity Tank," followed by its serial number and capacity in gallons.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.133 Accumulation tanks. Where the rectifier removes distilled spirits from the bottling line which contain sediment or foreign matter, or which otherwise require refiltering or rebottling, he may install suitable accumulation tanks in the bottling room for the accumulation of such spirits. Each such tank shall have plainly and legibly painted thereon, or on a sign affixed thereto, the words "Accumulation Tank," followed by its serial number and capacity in gallons. If the spirits accumulated in each tank are of the same class and type, they may be returned to the bottling tank system for refiltering and bottling with the same batch of spirits. The return of the spirits to the bottling tank, if such spirits are being bottled pursuant to a Form 237, must be under the supervision of the storekeeper-gauger. Unless the spirits are refiltered and bottled with the same lot of spirits from which they were originally bottled, they must be returned for rerectification under an approved formula, or, in the case of spirits not subjected to taxable rectification, returned to the dumping and reducing tank for commingling with spirits without rectification within the limitation of § 235.697. In such case, appropriate notation will be made on the Form 230 or Form 237 relative to the return of the spirits.

§ 235.134 Stills. All stills in the rectifying plant shall be located in the rectifying room and shall be of substantial construction and must have a clear space of not less than 1 foot around them. Every still must have plainly and legibly painted thereon, or on a sign attached thereto, words indicating its use, or uses, as "Gin Still," "Cordial Still," "Water Still," etc., followed by its serial number and capacity in wine gallons. All stills, except cordial stills of not more than 250 wine-gallon capacity and water stills, shall be connected with the receiving tanks by continuous permanent pipelines; *Provided*, That where such receiving tank is mounted on scales, the pipeline may be connected with the tank by means of flexible connections with the ends permanently attached and secured by means of Government cap seals, or by brazing or welding, to the inlet of the tank and to the pipeline. If the gin still is equipped with a pipeline to by-pass the berry basket, such pipeline must be equipped with a valve for locking with a Government lock.

§ 235.135 Other rectifying equipment. Other rectifying equipment shall be located in the rectifying room and, where practicable, shall be appropriately marked. Tanks used for more than one purpose shall be marked accordingly, as "Weighing and Storage Tank," but processing tanks used for the rectification of spirits may not be used in connection with the bottling of spirits without rectification.

§ 235.136 Distilled water storage tanks. If the rectifier produces distilled water, or receives the same by pipeline from contiguous establishments operated under internal revenue laws and regulations, distilled water storage tanks shall be provided and so located that their contents may be readily inspected by internal revenue officers. Each such tank shall be equipped with a suitable device whereby the contents can be accurately determined, and shall have plainly and legibly marked thereon, or on a sign affixed thereto, the words, "Distilled Water Storage Tank," followed by its serial number and capacity in gallons. The pipeline must be securely constructed as provided in § 235.140. Barrels or other wooden containers in which distilled spirits were previously packaged may not be used for the removal of distilled water.

(68A Stat. 680; 26 U. S. C. 5552)

PIPELINES

§ 235.137 Pipelines connecting bottling tanks and bottling machine. The bottling tanks may be connected with the bottling machine either by a fixed pipeline, or by a detachable hose, exposed to view throughout its entire length.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.138 Pipelines to contiguous taxpaid bottling house or rectifying plant. Pipelines used for the conveyance of spirits to a contiguous taxpaid bottling house or rectifying plant, as provided in Subpart BB, shall be constructed, secured, and marked in accordance with

the applicable provisions of § 235.139. A permanent pipeline must be installed to connect the tank in the rectifying plant with the tank in the contiguous taxpaid bottling house or rectifying plant, to which spirits are to be transferred, and each such pipeline must be equipped with a valve, in the transferring rectifying plant, capable of being locked with a Government lock. Each pipeline to a contiguous taxpaid bottling house or rectifying plant shall have painted thereon, at a point near the manifold or valve controlling the flow, identification as to the premises to which the pipeline leads, as "TPBH-7", "RP-7", etc. Where spirits are to be conveyed from two or more tanks in the rectifying plant or to two or more tanks in the contiguous taxpaid bottling house or rectifying plant, the pipeline may be connected by manifold connections so arranged as to control the flow of spirits from or into each tank. There shall be painted on each pipeline extending from the manifold a number corresponding with the serial number of the tank with which the pipeline is connected, unless the arrangement of the pipeline is such that the identity of the tank with which it is connected is apparent. Where the tank in the transferring rectifying plant is mounted on scales, the pipeline may be connected therewith by means of short, detachable hose connections. Pipelines used for the conveyance of spirits to a contiguous taxpaid bottling house or rectifying plant shall be constructed, secured, and so arranged that each such pipeline can be completely drained after each transfer of spirits.

§ 235.139 *Pipelines from other contiguous premises.* The pipelines used for the conveyance of taxpaid spirits to storage, processing, or bottling tanks must be of a fixed and permanent character, securely constructed and connected and so arranged as to be exposed to view throughout their entire lengths. Such pipelines, except those from a bonded winery, must be secured by brazing, welding, fastening and sealing, or locking with Government locks as to effectually prevent disconnection and access to the spirits. When the storage, processing, or bottling tanks are mounted on scales the pipeline may be connected therewith by means of short, detachable hose connections if the end of the pipeline is equipped with a valve which may be locked with a Government lock: *Provided*, That where the pipeline leading from the contiguous premises is equipped with a valve on such contiguous premises which may be locked with a Government lock, so as to control the flow of spirits, such valve in the receiving rectifying plant is not required to be locked. Where spirits are to be conveyed to two or more storage, processing, or bottling tanks in the rectifying plant, the pipelines may be connected with such tanks by manifold connections so arranged as to control the flow of spirits both into or out of each tank. Each pipeline from a contiguous establishment shall have painted thereon, at a point near the manifold or valve controlling the flow, identification as to the premises from which the pipeline originated, as

"RD-7", "IRBW-2", etc. Filters may be installed in pipelines connected with bottling tanks. Only spirits which are to be bottled without rectification may be conveyed by pipeline from contiguous premises directly into bottling tanks. There shall be painted on each pipeline extending from the manifold to storage, processing, or bottling tanks, a designation and number corresponding with the serial number of the tank with which the pipeline is connected, unless the arrangement of the pipeline is such that the identity of the tank with which it is connected is apparent.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.140 *Distilled water pipelines.* The pipeline used for the conveyance of distilled water to contiguous establishments operated under the internal revenue laws and regulations must be an independent one, without any connection with any other pipe, tank, vessel, or utensil on the rectifying plant premises, except the distilled water storage tank: *Provided*, That where distilled water is to be so conveyed from two or more distilled water storage tanks, the pipeline may be connected with such tanks by permanent manifold connections. The pipeline must be of a fixed and permanent character, securely constructed and so arranged as to be exposed to view throughout its entire length. The valves, flanges, and other connections in such pipeline on the rectifying plant premises must be brazed, welded, or otherwise secured, in such a manner that the pipeline and its connections cannot be detached or altered without showing evidence of tampering. Where distilled water is produced in the rectifying plant, the distilled water storage tank must be connected with the water still by a continuous, fixed, pipeline.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.141 *Colors for pipelines.* The pipelines in the rectifying plant used for conveying the following substances shall be kept painted in the colors indicated:

Black.....	Spirits.
Blue.....	Vapor, high wines, low wines, and heads and tails.
Brown.....	Residue from stills.
White.....	Water.
Aluminum.....	Steam.
Orange.....	Air.
Purple.....	Refrigerants.

These colors are intended for such pipelines only and are prescribed for the purpose of distinguishing such pipelines from each other and from all other pipelines on the premises which are painted but for which colors are not prescribed. The painting in one of the prescribed colors or a color similar thereto, of a pipeline for which a color is not prescribed, is prohibited. Pipelines for which colors are not prescribed may be painted in sections of contrasting colors.

SEALING PIPELINES

§ 235.142 *General.* Where flanges, unions, valves and other detachable connections in pipelines, required to be sealed by this part, are not secured by welding or brazing, and are not to be secured by Government locks, they must

be prepared by the rectifier for sealing with Government "cap" seals.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.143 *Sealing flanges.* Flanges may be prepared for sealing by one of the following methods:

(a) By applying a "castle" nut with a hole drilled through the bolt so that the sealing wire may be passed through like a cotter pin, two such nuts being applied to each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three such nuts will be applied at approximately equal distances apart;

(b) By drilling a small hole through both nut and bolt, two such bolts and nuts being drilled for each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three bolts and nuts will be so drilled at approximately equal distances apart; or

(c) By drilling a hole through the corner of the head of the bolt and one through the corner of the nut so the two will be sealed together, two such bolts and nuts being drilled for each flange, opposite each other, unless the flange is secured with an uneven number of bolts, in which case three bolts and nuts will be so drilled at approximately equal distances apart.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.144 *Sealing unions.* Unions will be prepared for sealing by enclosing the same in a metal box with holes for the sealing wire.

(68A Stat. 680; 26 U. S. C. 5552)

§ 235.145 *Sealing valves.* Small gate and globe valves may be prepared for sealing by enclosing the packing nut and hood with a metal band or strap drawn tightly around the valve and fitted for reception of the sealing wire, or by drilling a hole in the packing nut so that the sealing wire may be passed through and drawn around the pipe and sealed. Where valves have large flanges, such flanges may be sealed in the same manner as other flanges.

(68A Stat. 680; 26 U. S. C. 5552)

SUBPART J—QUALIFYING DOCUMENTS

§ 235.155 *Notice, Form 27-B.* Every person intending to engage in the business of a rectifier must give notice of such intention on Form 27-B, in triplicate, to the assistant regional commissioner before engaging in the business. Except as provided in § 235.161 in the case of amended and supplemental notices, all of the information indicated by the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part, shall be furnished. Each such notice shall contain, or be verified by, a written declaration that such notice is made under the penalties of perjury. Such notices must be numbered serially commencing with number 1 and continuing in regular sequence for all notices thereafter filed, whether amended or supplemental. All data, written statements, affidavits, and other documents sub-

mitted in support of the notice shall be deemed to be a part thereof.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.156 *Federal Alcohol Administration Act permit.* Under the Federal Alcohol Administration Act and Regulations 1 (27 CFR Part 1) issued pursuant thereto, any person, except an agency of a State or political subdivision thereof, or any officer or employee of any such agency, intending to engage in the business of rectifying distilled spirits and wines, is required to procure a rectifier's basic Federal Alcohol Administration Act permit (Form 1638) therefor. In addition, a basic warehousing and bottling permit (Form 1642) must be procured where unrectified spirits, or spirits rectified by another are warehoused and bottled. The trade names or styles under which it is intended to conduct the business must be specified in the permit. Applications for such permits should be filed on Forms 1637 and 1641, respectively, with the assistant regional commissioner at the time of filing notice, Form 27-B.

§ 235.157 *Description of apparatus and equipment.* There must be described on Form 27-B, in the space provided therefor, all storage tanks, receiving tanks, processing tanks, bottling tanks, and stills, which shall be listed separately as to serial number and capacity in wine gallons. Tanks used either as dumping and reducing tanks or as processing tanks shall be so described on Form 27-B. All other regular and permanent rectifying equipment must be described on Form 27-B.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.158 *Description of rooms.* All rooms on the rectifying plant premises shall be accurately described on Form 27-B. The description shall include the designated name of the room, which shall be according to its use, such as receiving room, rectifying room, bottling room, and finished products room, the materials of which constructed, the dimensions thereof, the location of doors, windows and other openings and the manner in which they are secured and protected. The materials of which partitions are constructed, and the height thereof, must also be stated. If more than one room is used for the same purpose, the name shall include an alphabetical designation to distinguish them, as "Receiving Room A," "Receiving Room B," etc.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.159 *Liquors to be used and produced.* The kinds of liquors proposed to be used in rectification, and the kinds of liquors proposed to be produced by such rectification, must be stated on Form 27-B.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.160 *Capacity.* The estimated maximum quantity, in wine gallons and proof gallons, of spirits or wines which can be rectified in every 24 hours by the use of all the apparatus and equipment in the rectifying plant, and the estimated quantity, in wine gallons and proof gallons, of spirits and wines which will be

rectified every 24 hours and the portion thereof for which exemption from the rectifying tax will be claimed, must be stated on Form 27-B.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.161 *Amended and supplemental notices.* Amended and supplemental notices on Form 27-B may be executed in skeleton form, except as to the items amended or supplemented. All other items which are correctly set forth in prior notices, and in which there has been no change since the last preceding notice, may be incorporated in the amended or supplemental notice by reference to the respective notice previously filed. Such incorporation by reference shall be made by entering for each such item, in the space provided therefor, the statement "No change since filing Form 27-B, Serial No. _____" (the number being inserted) and the date of such form. The assistant regional commissioner may at any time, in his discretion, require the filing of a complete notice on Form 27-B.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.162 *Formulas and processes, Form 27-B Supplemental.* The rectifier must submit Form 27-B Supplemental, in quadruplicate, for each formula and process to be employed in the rectification of spirits or wines, which shall constitute a part of the notice, Form 27-B. The statement of formula and process shall be prepared in accordance with subpart R.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.163 *Corporate documents.* There must be submitted with, and made a part of, the original or initial notice on Form 27-B, given by a corporation to engage in the business of a rectifier, properly certified copies, in triplicate, of the following documents:

- Articles of incorporation and any amended articles of incorporation.
- Certificate of incorporation.
- Certificate authorizing corporation to operate in State where rectifying plant is located, if other than that in which incorporated.
- Extracts of minutes of meetings of stockholders, showing election of directors.
- By-laws.
- Extracts of the minutes of the meetings of the board of directors, showing the election of officers.
- Extracts of the minutes of meetings of the board of directors, authorizing certain officers or other persons to sign for the corporation.
- List of names and addresses of the officers and directors.
- List of stockholders, as provided in § 235.164.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.164 *List of stockholders.* In the case of corporations and similar legal entities, there must be submitted with Form 27-B, at the commencement of business, and annually thereafter on May 1, a list of the names and addresses of all stockholders and other persons interested in the corporation or other legal entity and the amount and nature

of the stock holding, or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him: *Provided*, That where more than 20 persons are interested in the corporation or other legal entity as stockholders or otherwise, there need be furnished only the names and addresses and the amounts and nature of the stock holding or other interest of the 20 persons having the largest ownership or other interest in each of the respective classes of stock or other interest, except where more complete information shall be specifically required by the assistant regional commissioner: *And provided further*, That where there has been no change in the stockholder and other persons interested in the corporation or other legal entity, or in the extent of the stock holding or other interest of such persons, the rectifier may furnish on May 1 of each year, a certified statement, in triplicate, to that effect in lieu of the prescribed list. Where a corporation operates two or more rectifying plants or other plants situated in the same region, or wholly owns one or more subsidiaries operating rectifying plants or other plants so situated, and in connection with qualifying for the operation of one of such rectifying plants or other establishments files a list of stockholders and other persons interested, as prescribed in this section, the filing of an additional list for each rectifying plant will not be required: *Provided*, That in lieu of such additional list there is submitted by such corporation a certificate, in triplicate, definitely identifying the corporation and plant with whose notice the list of stockholders and other persons interested is filed, and giving the date of the filing thereof.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.165 *Affidavit.* In the case of a corporation, there must be submitted with each list of stockholders an affidavit, in triplicate, executed by an officer of the corporation authorized so to do, showing the number of shares of each class of stock or other evidence of ownership, such as voting trust certificates, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders, and certifying to the correctness of the list of stockholders or the statement authorized to be furnished in lieu of such list. In the case of an individual owner, partnership, or association, there must be submitted with Form 27-B, at the commencement of business, and annually thereafter on May 1, an affidavit, in triplicate, giving the name of every person interested or to be interested in the rectifying plant, whether such interest appears in the name of the interested party or in the name of another for him.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.166 *Articles of partnership or association.* In the case of a partnership or association, a certified copy, in triplicate, of the articles of partnership or association, if any, shall be submitted with and constitute a part of the notice, Form 27-B.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.167 *Trade name certificate.* Where the rectifier is to do business under a firm or trade name, there must be submitted with and made a part of the notice, Form 27-B, certified copies, in triplicate, of the certificate or other document filed with or issued by State officials under the laws of the State to cover the transaction of business under such firm or trade name. If no such certificate or other document is required by the laws of the State to be filed with or issued by State officials to cover the transaction of business under a firm or trade name, the rectifier shall furnish a statement, in triplicate, to that effect.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.168 *Power of attorney, Form 1534.* If the notice or other qualifying documents are signed by an attorney in fact for an individual, partnership, association, or corporation, or by one of the members for a partnership or association, or, in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 235.163, such notice or other qualifying documents must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same. Such powers of attorney shall be executed on Form 1534, in triplicate, and submitted to the assistant regional commissioner.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.169 *Execution of power of attorney.* Where the principal giving the power of attorney is an individual, it must be executed by him in person, and not by an agent. In the case of a partnership or association, powers of attorney authorizing one or more of the members, or another person, to execute documents on behalf of the partnership or association must be executed by all of the members constituting the same. However, if one of more members less than the whole number constituting the partnership or association have been delegated the authority to appoint agents or attorneys in fact, the power of attorney may be executed by such member or members, provided it is supported by a duly authenticated copy, in triplicate, of the document conferring authority upon the member or members to execute the same. Where, in the case of a corporation, powers of attorney are executed by an officer thereof, such documents must be supported by triplicate copies of the authorization of such officer so to do, certified by the secretary or assistant secretary of the corporation under the corporate seal, if any, to be true copies.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.170 *Duration of power of attorney.* Powers of attorney authorizing the execution of documents on behalf of a person engaged in, or intending to engage in, the business of a rectifier shall continue in effect until written notice, in triplicate, of the revocation of such authority is received by the assistant regional commissioner, unless terminated by operation of law.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.171 *Bond, Form 34.* Every person intending to commence the business of a rectifier shall, upon filing his notice of such intention, Form 27-B, and before proceeding with such business, execute a bond on Form 34, in triplicate, in conformity with the provisions of Subpart K and file the same with the assistant regional commissioner.

§ 235.172 *Penal sum.* The penal sum of the rectifier's bond, Form 34, shall be not less than the amount of internal revenue tax that the rectifier will be liable to pay in a period of 30 days, but in no case shall the penal sum of the bond be less than \$1,000 or greater than \$100,000. Where the rectifier has not furnished bond in the maximum penal sum of \$100,000 and the rectification tax, including tax under section 5022, I. R. C., on the quantity of spirits and wines actually rectified during any period of 30 days, exceeds the penal sum of the bond on file, he must furnish immediately a new or additional bond in a sufficient penal sum, effective as of the beginning of such period. If an additional bond is furnished, it must be in accordance with § 235.195.

§ 235.173 *Registry of stills, Form 26.* Every person having in his possession or custody, or under his control, any still or distilling apparatus set up and intended to be used for the distillation, redistillation, or recovery of distilled spirits, shall register the same with the assistant regional commissioner for the region in which the still is located, immediately it is set up. Such registration shall be made on Form 26, in triplicate, in accordance with the requirements of the columns, lines and instructions on the form. The form shall be verified by a statement that it is executed under the penalties of perjury.

(68A Stat. 628, 749; 26 U. S. C. 5174, 6065)

§ 235.174 *Plat and plans.* Every person intending to engage in the business of a rectifier must submit to the assistant regional commissioner with his notice, Form 27-B, an accurate plat of the rectifying plant premises and accurate plans of the buildings or rooms, apparatus, and equipment therein, in triplicate, conforming to the requirements of Subpart L of this part.

§ 235.175 *Additional information.* The assistant regional commissioner may at any time, in his discretion, require the rectifier to furnish such additional information as he may deem necessary.

SUBPART K—BONDS AND CONSENTS OF SURETY

§ 235.185 *General requirements.* Every person required to file a bond or consent of surety under this part shall prepare and execute it on the prescribed form, in triplicate, in accordance with the lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part, and shall submit it to the assistant regional commissioner.

§ 235.186 *Surety or security.* Bonds required by this part shall be given with corporate surety or collateral security. (Sec. 1, 28 Stat. 279, 40 Stat. 1148, as amended; 6 U. S. C. 6, 15)

§ 235.187 *Corporate surety.* Bonds may be given with corporate surety authorized by the Secretary of the Treasury to become surety on Federal bonds, subject to the limitations prescribed by the Secretary in Treasury Department Form 356.

(Secs. 1, 3, 28 Stat. 279, as amended; 6 U. S. C. 6, 8)

§ 235.188 *Two or more corporate sureties.* A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties: *Provided,* That each corporate surety may limit its liability in terms upon the face of the bond in a definite, specified amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in Treasury Department Form 356. When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required penal sum of the bond.

(Secs. 1, 3, 28 Stat. 279, as amended; 6 U. S. C. 6, 8)

§ 235.189 *Powers of attorney.* Powers of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of corporate sureties are required to be filed with, and passed upon by, the Commissioner of Accounts, Surety Bonds Branch, Treasury Department. Such powers and other evidence of appointment need not be filed with, or submitted to, assistant regional commissioners.

§ 235.190 *Collateral security.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate sureties in accordance with the provisions of Department Circular No. 154, revised (31 CFR, Part 225): *Provided,* That United States Savings, Defense Savings, and War Savings Bonds issued under the authority of S. 22 of the Second Liberty Bond Act as amended, and other bonds and notes of the United States which are nontransferable or the hypothecation of which will not be recognized by the Treasury Department, may not be pledged and deposited as security in lieu of corporate surety.

(61 Stat. 646; 6 U. S. C. 15)

§ 235.191 *Consents of surety.* Consents of surety to a change in the terms of a bond must be executed on Form 1533, in as many copies as are required of the bond which they affect, by the principal and all sureties with the same formality and proof of authority to execute as are required for the execution of bonds. Form 1533 will be used by obligors on collateral bonds as well as those on surety bonds. The Form 1533 must properly identify the bond affected thereby and state specifically and precisely what is covered by the extended terms thereof.

Consent of corporate surety may be executed by an agent or attorney in fact duly authorized so to do by power of attorney filed by the surety with the appropriate assistant regional commissioner, or the consent may be executed by the home office officials of such corporate surety.

§ 235.192 *Approval required.* No person intending to commence or to continue the business of a rectifier shall commence or continue such business until all bonds in respect of such business required by any provision of law have been approved by the assistant regional commissioner.

(68A Stat. 680; 26 U. S. C. 5551)

§ 235.193 *Authority to approve.* Assistant regional commissioners are authorized to approve all bonds and consents of surety required by this part.

(68A Stat. 680; 26 U. S. C. 5551)

§ 235.194 *Cause of disapproval.* Bonds or consents of surety submitted by any person in respect to the business of a rectifier may be disapproved if the person giving the same, or owning, controlling, or actively participating in the management of such business, shall have been previously convicted in a court of competent jurisdiction of:

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision relates to internal revenue or customs taxation of distilled spirits, wines, or beer, or if such an offense shall have been compromised upon payment of penalties or otherwise; or

(b) Any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

The rectifier's bond, Form 34, may also be disapproved if the situation of the rectifying plant is such as would enable the rectifier to defraud the United States.

(68A Stat. 680; 26 U. S. C. 5551)

§ 235.195 *Appeal from disapproval.* Where a bond or consent of surety is disapproved by the assistant regional commissioner, the person giving such bond or consent may appeal the disapproval to the Director, Alcohol and Tobacco Tax Division.

(68A Stat. 680; 26 U. S. C. 5551)

§ 235.196 *Additional or strengthening bonds.* In all cases where the penal sum of the bond on file and in effect is not sufficient, computed as prescribed by law and regulations, the principal may give an additional or strengthening bond in a sufficient penal sum, provided the surety thereon is the same as on the bond already on file and in effect; otherwise a new bond covering the entire liability will be required. Such additional or strengthening bonds, being filed to increase the bond liability of the principal and the surety, are in no sense substitute bonds, and the assistant regional commissioner will refuse to approve any additional or strengthening bond where

any notation is made thereon intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full penal sum. Additional or strengthening bonds must show the current date of execution and the effective date in the blank spaces provided therefor. Such bonds must have marked thereon, by the obligors at the time of execution, "Additional Bond," or "Strengthening Bond."

§ 235.197 *New bond.* A new bond may be required at any time in the discretion of the assistant regional commissioner. A new bond shall be required immediately in the case the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons, acting in a fiduciary capacity, continuing or liquidating the business of the principal, must execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When, in the opinion of the assistant regional commissioner, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal will be required to give a new bond. Where a bond is found to be not acceptable, the principal shall be required to file immediately a new and satisfactory bond, or discontinue business forthwith.

§ 235.198 *Superseding bond.* Where a new bond is submitted by the principal to supersede a bond or bonds then in effect, and such superseding bond has been approved, notice of termination of the superseded bond may be issued as provided in Subpart P. Superseding bonds must show the current date of execution and the date they are to be effective, and each such bond shall have marked thereon by the obligors at the time of execution, "Superseding bond."

SUBPART L—PLATS AND PLANS

§ 235.210 *Plat and plans required.* Every person intending to engage in the business of a rectifier must, as provided in § 235.174, file an accurate plat and accurate plans of the rectifying plant premises, apparatus, and equipment, in triplicate, with the assistant regional commissioner.

§ 235.211 *Preparation.* Every plat and plan shall be drawn to scale, and each sheet thereof shall bear a distinctive title, enabling ready identification. The cardinal points of the compass must appear on each sheet except the elevational flow diagrams (plans). The minimum scale of any plat will not be less than $\frac{1}{8}$ -inch per foot. Each sheet of the original plat and plans shall be numbered, the first sheet being designated number 1, and the other sheets numbered in consecutive order. Plats and plans shall be submitted on sheets of tracing cloth, opaque cloth, or sensitized linen. The dimensions of plats and plans shall be 15 by 20 inches, outside measurement, with a clear margin of at least 1 inch on each side of the drawing, lettering, and writing. Plats and plans may be original drawings, or

reproductions made by the "ditto process," or by blue- or brown-line lithoprint if such reproductions are clear and distinct.

§ 235.212 *Depiction of rectifying plant premises.* Plats must show the outer boundaries of the rectifying plant premises, in feet and inches, in a color contrasting with those used for other drawings on the plat, and must contain an accurate depiction of the building, or buildings, comprising the premises, and any driveway, public highway, or railroad right-of-way adjacent thereto or connecting therewith. The depiction of the premises shall agree with the description in the notice, Form 27-B. If the premises are separated by a public highway or railroad right-of-way, and the tracts of land comprising the premises, or parts thereof, abut on such highway or right-of-way opposite each other, the different tracts will be depicted separately, in feet and inches. If two or more buildings are to be used, the designated name of each shall be indicated, and all pipelines or other connections, if any, between the same depicted. Where two or more buildings are used for the same purpose, the name of each such building shall include an alphabetical designation, beginning with "A", and they shall be so shown on the plat. All first floor exterior doors of each building on the premises will be shown on the plat. If the rectifying plant consists of a room or a floor of a building, an entire outline of the building, the precise location and dimensions of the room or floor, and the means of ingress and egress to a public street or yard shall be shown. Except as provided in § 235.220, all pipelines leading to or from the premises, the purpose for which used, and the points of origin and termination will be indicated on the plat.

§ 235.213 *Contiguous premises.* Where a distillery, internal revenue bonded warehouse, taxpaid bottling house, or other premises on which liquors are manufactured, stored, or sold, are contiguous to the rectifying plant premises, the plat must show the relative location of the rectifying plant and such contiguous premises, the distance they are from each other, and all pipelines, if any, and other connections between them. The outlines of such contiguous premises and the rectifying plant premises must also be shown in contrasting colors.

§ 235.214 *Floor plans.* The plans shall include a floor plan of each building, showing the general dimensions of the rooms and floors, and the location of all doors, windows, and other openings, and how such openings are protected. If a portion of a building is used, such as a room or floor, the floor plans will include only that portion, and shall also show the means of ingress and egress to the street. All fixed apparatus and equipment, except pipelines, must be shown in their exact location on the floor plans and their designated use indicated. Except as provided in this subpart, pipelines need not be shown. In the case of stills, tanks, and similar

equipment, the serial number and capacity shall also be shown.

§ 235.215 *Elevational flow diagrams.* Elevational flow diagrams (plans) shall be submitted which shall depict all equipment in its approximate operating sequence and elevation by floors, with all connecting pipelines, valves, flanges, measuring devices, and attachments for Government locks. Where flanges, unions, or other connections in pipelines are brazed, welded, or otherwise permanently secured in such a manner as to constitute a continuous, single pipeline, the location of such flanges, unions, or other connections, and the manner of securing the same, need not be shown on the plans. The elevation by floors on the diagrams may be indicated by horizontal lines representing floor levels. All major fixed equipment, such as stills and tanks, must be identified on the plans as to number and use. The elevational flow diagram must be so drawn that all fixed pipelines, except those indicated by § 235.220, may be readily traced from beginning to end. Other types of drawings that clearly depict the information required by this section may be submitted in compliance with this section.

§ 235.216 *Pipelines.* The plat and plans shall show pipelines, if any, connecting the rectifying plant with a registered or fruit distillery, internal revenue bonded warehouse, industrial alcohol plant, industrial alcohol bonded warehouse, bonded winery, rectifying plant, and taxpaid bottling house for the transfer of taxpaid spirits. The plat will show the relative location of the rectifying plant and the premises connected by such pipelines. The plat or plans will also show the storage, bottling, or processing tanks, to which such pipelines are connected.

§ 235.217 *Pipelines in colors.* The fixed pipelines must be shown on the plat and plans in the colors in which they are required to be painted, as prescribed in § 235.141.

§ 235.218 *Location of Government locks.* The location of all Government locks required to secure the apparatus and equipment, and the doors of rooms, must be indicated on the elevational flow diagrams (plans) by the symbol "GL" at the points where the locks are to be attached.

§ 235.219 *Direction of flow.* The direction of the flow of spirits, vapor, etc., through pipelines must be indicated on the plans by arrows.

§ 235.220 *Pipelines exempted.* Approved public or private utility service lines, such as sewers, electric or gas conduits or pipes, and approved sprinkler, refrigeration, or heating systems which have no connection with the equipment used for spirits, need not be shown on the plans, provided that the point of entry to the premises shall be indicated on the plans.

§ 235.221 *Certificate of accuracy.* The plat and plans shall bear a certificate of accuracy in the lower right hand corner of each sheet, signed by the rectifier, the draftsman, and the assistant regional commissioner, substantially in the following form:

(Name of proprietor)

(Address)

Approved _____

(Date)

(Assistant Regional Commissioner)

Accuracy certified by:

(Name and capacity—
for the proprietor)

(Draftsman)

Rectifying Plant No. _____

_____ 19____, Sheet No. _____

(Date)

§ 235.222 *Revised plats and plans.* The sheets of revised plats and plans shall bear the same number as the sheets superseded, but will be given a new date. Any additional plats and plans shall be given a new number in consecutive order, or will be otherwise numbered and lettered in such manner as will permit the filing of the plats and plans in proper sequence.

SUBPART M—REQUIREMENTS GOVERNING CHANGES IN NAME, PROPRIETORSHIP, CONTROL, LOCATION, PREMISES AND EQUIPMENT

§ 235.230 *General requirement.* Notice in writing must be given, in the form prescribed, to the assistant regional commissioner in case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of the rectifying plant, within 10 days after such change.

(68A Stat. 650; 26 U. S. C. 5271)

CHANGE IN INDIVIDUAL, FIRM, OR CORPORATE NAME

§ 235.231 *Amended notice, Form 27-B.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must submit to the assistant regional commissioner an amended notice on Form 27-B, in triplicate, covering the new name.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.232 *Amended permit.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must procure from the assistant regional commissioner under the Federal Alcohol Administration Act an amended basic permit or permits authorizing the rectifier to engage in business under the new name.

(Sec. 3, 49 Stat. 978; 27 U. S. C. 203)

§ 235.233 *Amended articles of incorporation, etc.* Where there is a change in the corporate name of the rectifier, he must submit to the assistant regional commissioner certified copies, in triplicate, of the amended articles of incorporation, and the amended certificate of incorporation issued under the laws of the State in which incorporated, covering the change in the corporate name. If the operations are conducted in a State other than the State in which incorporated, there must also be submitted to the assistant regional commissioner certified copies, in triplicate,

of the amended certificate issued under the laws of the State in which the operations are conducted authorizing the corporation to operate under its new name in such State. If other documents than those specified are required under the laws of the State to effect a change in the name of the corporation, certified copies, in triplicate, of such documents must be submitted with the notice, Form 27-B, in lieu of those specified.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.234 *Amended articles of partnership or association.* Where there is a change in the firm name of the rectifier, he must, if the rectifier is a partnership or association, submit to the assistant regional commissioner certified copies, in triplicate, of the amended articles of partnership or association, if any.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.235 *Sign.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must change the rectifying plant sign to conform to the provisions of § 235.115.

(68A Stat. 650, 651; 26 U. S. C. 5271, 5274)

§ 235.236 *Marking packages and cases.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must, upon receipt of the assistant regional commissioner's authorization, as provided in § 235.303, mark under such new name the spirits rectified or bottled thereunder, as provided in Subpart HH of this part, unless the spirits are rectified or bottled under a trade name or style other than the name in which the rectifying plant is qualified and operated, as provided in Subpart KK of this part.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.237 *Records.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must keep records and submit reports covering operations under the new name as provided in Subpart KK of this part.

(68A Stat. 651, 652; 26 U. S. C. 5281, 5285)

§ 235.238 *Special tax stamps.* Where there is a change in the individual, firm, or corporate name of the rectifier, he must file within 30 days of such change an additional return on Form 11 with the district director covering the new individual, firm, or corporate name. The special tax stamp or stamps must be forwarded to the district director for appropriate notation with respect to such change in name.

(68A Stat. 615, 651; 26 U. S. C. 5081, 5281)

TRADE NAMES

§ 235.239 *Basic qualification required.* Where the rectifying plant is to be operated under a trade name or style, or under a number of trade names or styles, other than those previously approved, the rectifier must file with the assistant regional commissioner a letterhead application for approval of such name or names. The assistant regional commissioner will forward such application to the National Office for action by the Director, Alcohol and Tobacco Tax Di-

vision. If the Director, Alcohol and Tobacco Tax Division, finds that the name or names may be used he will advise the assistant regional commissioner. The rectifier will be advised accordingly. He may then file with the assistant regional commissioner Form 1643 for an amended basic permit and Form 27-B for permission to operate under the trade name (only one) specifying the date operations are to begin. The assistant regional commissioner's action will be in accordance with § 235.303.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.240 *Trade names certificate, amended articles of incorporation, etc.* The rectifier shall file with the assistant regional commissioner certified copies of trade names and amended articles of incorporation which are required by State laws. If no such documents are required the rectifier will furnish a statement to that effect.

§ 235.241 *Sign.* The rectifying plant sign must be changed to conform to the provisions of § 235.115, unless operation under the trade name is to be temporary, in which event it will not be necessary to change such sign.

(68A Stat. 651; 26 U. S. C. 5274)

§ 235.242 *Marking containers.* The packages and cases of spirits may be marked under the trade name in which they were rectified or bottled as provided in Subpart KK of this part.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.243 *Records.* Appropriate entries must be made in the rectifying plant records covering operations under each trade name, as provided in Subpart KK of this part.

(68A Stat. 652; 26 U. S. C. 5285)

§ 235.244 *Special tax stamps.* The rectifier must file within 30 days of such change an additional return on Form 11 with the district director showing the new trade name or style. Special tax stamp or stamps must be forwarded to the district director for appropriate notation with respect to such change in trade name or styles.

(68A Stat. 615, 651; 26 U. S. C. 5061, 5281)

§ 235.245 *Period of operations.* Where the rectifying plant is operated under more than one trade name or style, the operation under each must be in multiples of twenty-four hours.

§ 235.246 *Subsequent operations.* The basic qualifying documents having once been filed and approved, by the assistant regional commissioner, subsequent operations of the rectifying plant, i. e., changing from one trade name to another trade name, or from a trade name to the principal or vice versa, the procedure prescribed by §§ 235.281 through 235.283 will be followed.

CHANGE IN PROPRIETORSHIP, SUSPENSION

§ 235.247 *Notice, Form 27-B.* If the outgoing rectifier is to discontinue permanently the business of rectifying, he must file with the assistant regional commissioner Form 27-B, in triplicate,

stating thereon the purpose to be "Permanent discontinuance of business," and giving the date of the discontinuance. If the outgoing rectifier is to temporarily discontinue the business of rectifying during operation of the rectifying plant by the successor, the statement of the purpose on the notice shall conform to the provisions of § 235.280.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.248 *Spirits.* Where there is to be a change in the proprietorship of the rectifying plant, the outgoing rectifier must, preparatory to transfer of the business to the successor, complete the rectification of spirits in process and taxpay the same, draw off, mark, brand, and stamp (where required) all rectified and unrectified spirits in the rectifying room, and remove all spirits from the rectifying plant and dispose of the same to a person authorized to receive them, unless they are transferred to the successor in accordance with Subpart LL of this part.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.249 *Records.* Where there is to be a change in the proprietorship of the rectifying plant, the outgoing rectifier must, preparatory to transfer of the business to the successor, make appropriate entries in the rectifying plant records and submit reports in accordance with the provisions of Subpart LL of this part.

(68A Stat. 652; 26 U. S. C. 5285)

CHANGE IN PROPRIETORSHIP, QUALIFICATION OF SUCCESSOR

§ 235.250 *Lessee.* If the successor is a lessee, he must qualify in the same manner as the proprietor of a new rectifying plant, regardless of the temporary nature of the tenancy, except that he may adopt the plat and plans of his predecessor as provided in § 235.254. The lessee must also file with the assistant regional commissioner certified copies, in triplicate, of the lease.

(68A Stat. 650, 651; 26 U. S. C. 5271, 5281)

§ 235.251 *Other nonfiduciary successor.* If the change in proprietorship is brought about by any other means, except by the appointment of an administrator, executor, receiver, trustee, assignee, or other fiduciary, the successor must likewise qualify in the same manner as the proprietor of a new rectifying plant, except that he may adopt the plat and plans of his predecessor as provided in § 235.254.

(68A Stat. 650, 651; 26 U. S. C. 5271, 5281)

§ 235.252 *Fiduciary.* If the successor is an administrator, executor, receiver, trustee, assignee, or other fiduciary, and intends to receive spirits, or to possess, rectify, or dispose of spirits on hand in the rectifying plant, he must comply with the provisions of Subparts F to J, to the extent that such provisions are applicable, except that in lieu of filing a new bond and a new plat and plans, the fiduciary may furnish a consent of surety extending the terms of his predecessor's bond and adopt the plat and plans of such predecessor in accordance with §§ 235.253 and 235.254. The fiduciary must also furnish certified copies, in

triplicate, of the order of the court or other pertinent documents showing his qualification as such fiduciary. The effective date of the qualifying documents filed by a fiduciary must be the same as the date of the court order or the date specified therein for him to assume control.

(68A Stat. 650, 680; 26 U. S. C. 5271, 5551)

§ 235.253 *Consent of surety.* The consent of surety extending the terms of the predecessor's bond to cover operation of the rectifying plant by a fiduciary must conform to the requirements of § 235.191 and be executed by both the fiduciary and the surety.

(68A Stat. 650, 680; 26 U. S. C. 5271, 5551)

§ 235.254 *Adoption of plat and plans.* The plat and plans of the rectifying plant may be adopted by a successor where they correctly describe and depict the rectifying plant premises and the buildings, apparatus, and equipment thereon, to be taken over by the successor. The adoption by a successor of the plat and plans of his predecessor shall be in the form of a certificate, in triplicate, in which shall be set forth the name of the predecessor, the address and number of the rectifying plant, a description of the rectifying plant premises, the number of each sheet comprising each plat and plan covered by such certificate, and a statement that the rectifying plant premises, and the buildings, apparatus, and equipment thereon, are correctly described and depicted on such plat and plans.

(68A Stat. 650, 651; 26 U. S. C. 5271, 5281)

§ 235.255 *Sign.* The successor, if other than a fiduciary temporarily operating the rectifying plant, must change the rectifying plant sign to conform to the requirements of § 235.115.

(68A Stat. 651; 26 U. S. C. 5274)

§ 235.256 *Special tax stamps.* The successor, if other than a fiduciary, must procure the required special tax stamps in accordance with Subpart S of this part. A fiduciary successor must submit Form 11 to the district director within 30 days from the date when operations are commenced by him. The special tax stamp or stamps should be submitted by the fiduciary to the district director for appropriate notation as to their transfer. Failure to file Form 11 will result in the rectifier incurring an additional special tax liability, computed from the first day of the calendar month in which operations were commenced.

(68A Stat. 615, 651; 26 U. S. C. 5061, 5281)

§ 235.257 *Spirits and wines.* If spirits and wines are received by transfer from the predecessor, the successor must comply with the requirements of Subpart LL of this part.

(68A Stat. 651; 26 U. S. C. 5281)

OTHER CHANGES

§ 235.258 *Changes in partnership.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, shall constitute a change in proprietor-

ship. Likewise, the bankruptcy or adjudicated insolvency of one or more of the partners results in a dissolution of the partnership and, consequently, a change in proprietorship. Where such a change in proprietorship of the rectifying plant occurs, the successor must qualify in the same manner as a new proprietor of the rectifying plant, except that the successor may adopt the plat and plans of the predecessor, in the manner prescribed by § 235.254.

§ 235.259 *Changes in stockholders, officers, and directors of corporations.* The sale or transfer of the capital stock of a corporation operating a rectifying plant does not constitute a change in the proprietorship of the rectifying plant. However, where the sale or transfer of capital stock results in a change in the control or management of the business, or where there is a change in the officers or directors, the rectifier must give notice thereof, in triplicate, to the assistant regional commissioner within 10 days after such change. Mere changes in stockholders of corporations not constituting a change in control need not be so reported. The assistant regional commissioner must, in the case of changes in officers or directors, be furnished extracts, in triplicate, of the minutes of the meetings showing such changes.

(68A Stat. 650; 26 U. S. C. 5271)

§ 235.260 *Reincorporation.* Where a corporation operating a rectifying plant is reorganized and a new charter or certificate of incorporation is secured, the new corporation must qualify in the same manner as a new proprietor of the rectifying plant, except that the new corporation may adopt the plat and plans of the predecessor, in the manner prescribed by § 235.254.

§ 235.261 *Change in location.* Where there is a change in the location of the rectifying plant, the rectifier must comply with all applicable provisions of Subparts F to J, except that in lieu of the filing of a new rectifier's bond, Form 34, the rectifier may furnish a consent of surety, Form 1533, in accordance with § 235.191, extending the terms of the rectifier's bond given for the former location to cover operation of the rectifying plant at the new location. The rectifier must submit, within 30 days from the date of commencing business at the new location, Form 11 to the district director for the district, and the special tax stamp or stamps must be forwarded to such district director for appropriate notation of the change of location. Failure to so file Form 11 will result in the rectifier incurring additional special tax liability, computed from the first day of the calendar month in which operations were commenced at the new location.

(68A Stat. 624, 650; 26 U. S. C. 5144, 5271)

§ 235.262 *Changes in premises.* Where the rectifying plant premises are to be extended or curtailed, the rectifier must file with the assistant regional commissioner an amended notice, Form 27-B, and an amended plat of the premises as extended or curtailed. If the plans are affected by the extension or curtailment, they must also be amended.

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The additional premises covered by an extension may not be used for rectifying purposes, and the portion of the premises to be excluded by a curtailment may not be used for other than rectifying purposes, prior to approval of the notice, Form 27-B.

(68A Stat. 650, 651; 26 U. S. C. 5271, 5281)

§ 235.263 *Changes in construction and use.* Where a change is to be made in the construction of a room or building not involving an extension or curtailment of the rectifying plant premises, or where a change is to be made in the use of any portion of such premises, the rectifier shall first secure approval thereof by the assistant regional commissioner pursuant to application, in triplicate, setting forth specifically the proposed changes. Upon approval of the application, the changes will be made under the supervision of an internal revenue officer, unless, in the opinion of the assistant regional commissioner, they do not require such supervision. The completed changes will be reflected in the next amended notice, Form 27-B, and amended plans filed by the rectifier, unless the assistant regional commissioner requires the immediate filing of an amended notice and amended plans.

(68A Stat. 650, 651; 26 U. S. C. 5271, 5281)

§ 235.264 *Changes in equipment.* Where changes are to be made in the apparatus and equipment, the rectifier must file an amended notice and amended plans, except that in the case of minor changes, such as general repairs, changes in pipelines, or the addition or removal of a tank, an amended notice and amended plans need not be filed immediately: *Provided*, That the proprietor shall first secure approval thereof by the assistant regional commissioner pursuant to application, in triplicate, setting forth specifically the proposed changes. Emergency repairs may be made under the supervision of the storekeeper-gauger without prior approval of the assistant regional commissioner. However, where such emergency repairs are made the proprietor shall file immediately a report thereof, in triplicate, with the assistant regional commissioner. Changes covered by an approved application will also be made under the supervision of an internal revenue officer. Upon completion of any changes made under his supervision, the officer will submit a report in triplicate, of the changes to the assistant regional commissioner.

(68A Stat. 650, 651, 680; 26 U. S. C. 5271, 5281, 5552)

SUBPART N—REQUIREMENTS GOVERNING OPERATION OF RECTIFYING PLANT UNDER ALTERNATING PROPRIETORSHIPS

§ 235.280 *Qualifications.* Where it is desired to operate a rectifying plant under alternating proprietorships, the successor (lessee) rectifier must qualify as proprietor of the rectifying plant in accordance with the provisions of §§ 235.250 through 235.257. At the time of the first suspension of the rectifying plant for operation under an alternating proprietorship, the outgoing (lessor) rectifier must discontinue operations

and file with the assistant regional commissioner an amended notice on Form 27-B, in triplicate, stating thereon the purpose of the notice to be "Temporary discontinuance in order that the rectifying plant may be operated by an alternate rectifier" and give the date of discontinuance. The outgoing (lessor) rectifier shall also file a blanket consent of surety, Form 1533, in triplicate, to continue in effect bond, Form 34. Such blanket consent of surety may be filed to cover all such alternate operations and may be executed in the following form:

To continue in effect the said bond, whenever operation of the rectifying plant is resumed from time to time, pursuant to application on Form 1696, filed by the principal following suspension of operations by an alternate proprietor.

The outgoing (lessor) rectifier shall also comply with the requirements of Subpart LL of this part.

§ 235.281 *Suspension and subsequent alternate proprietorships.* Where an alternate proprietor desires to suspend operations of the rectifying plant preparatory to resumption by another alternate proprietor, he must file Form 1696, after proper execution of parts 1 and 2, with the storekeeper-gauger in charge giving notice of intention to suspend operations. The form shall be executed and filed in accordance with the various lines on the form and the instructions printed thereon or issued in respect thereto. Form 1696 shall contain or be verified by a written declaration that it is executed under the penalties of perjury. Operations will be suspended at the time specified in the notice upon approval thereof by the storekeeper-gauger in charge. The outgoing (lessor) rectifier shall also comply with the requirements of Subpart LL of this part.

(68A Stat. 749; 26 U. S. C. 6065)

§ 235.282 *Resumption for subsequent alternate proprietorships.* Where an alternate proprietor desires to resume operation of the rectifying plant following suspension by another alternate proprietor, he must file Form 1696, after proper execution of parts 1 and 2, with the storekeeper-gauger in charge, for authority to resume operations. The notice shall be executed and otherwise completed as provided in § 235.281. The outgoing (lessor) rectifier shall also comply with the requirements of Subpart LL of this part.

§ 235.283 *Approval and disposition of Form 1696.* Upon receipt of Form 1696, the storekeeper-gauger in charge will, if he finds that the notice may be properly approved, execute the certificate of approval on all copies and dispose of the copies in accordance with the instructions printed thereon or issued in respect thereto.

SUBPART O—ACTION BY ASSISTANT REGIONAL COMMISSIONER

ORIGINAL ESTABLISHMENT

§ 235.290 *Examination of qualifying documents.* Upon receipt of the notice, plat, plans, bond, and other documents

required by this part of persons intending to qualify as rectifiers, the assistant regional commissioner will examine the same to determine whether they have been properly executed, and whether they reflect compliance with the requirements of the law and this part. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not reflect compliance with this part, action thereon will be held in abeyance until the omission, error or discrepancy has been rectified, and there has been full compliance with all requirements.

§ 235.291 Inspection of premises and equipment. When the required documents have been filed in proper form, the assistant regional commissioner will assign an inspector to examine the premises, buildings, apparatus and equipment, and determine whether they conform with the description thereof in the notice, plat and plans, and whether the construction and measures of protection afforded meet the requirements of law and this part. Where the inspection discloses minor irregularities in the qualifying documents or in the construction, the inspector will, at the time of their discovery, direct the attention of the rectifier to the same in order that the rectifier may correct the defects before completion of the inspection.

§ 235.292 Examination of bottling tank. The assistant regional commissioner will cause a careful examination to be made of each bottling tank to see that it is constructed in strict compliance with this part before it is used by the rectifier. The officer charged with the duty of examining the bottling tank will also test the accuracy of the scale or measuring device provided for determining the contents of the tank, and if it is found that the same is not strictly accurate, or if any portion of the equipment does not conform to the requirements of this part, he will not recommend approval of the tank until the proper changes are made.

§ 235.293 Test of measuring devices. The test of the accuracy of the scale or measuring device must be an actual one. It may be made by filling the tank with water and drawing off several precise quantities, observing after each withdrawal that the quantity remaining is correctly indicated by the scale or measuring device and that the quantity withdrawn agrees with that indicated by the scale or measuring device. An accurate water meter, where available, may likewise be used to check the calibration of the tank. Where bottling tanks are mounted on scales, the accuracy of the scales used for weighing spirits in lots of not over 500 gallons will be tested from time to time, under the supervision of an internal revenue officer, by means of the test weights provided in accordance with § 235.122. The scales will be tested by placing the test weights on the scales and checking the weight registered on the beam of the scales. The test weights will then be removed without disturbing the beam and the bottling tank filled with spirits or water to the same weight,

whereupon the test weights will again be placed upon the scales, the spirits or water being retained in the tank and the weight registered on the beam checked. This operation will be continued until the scales have been checked in 500-pound notches at all weights at which the scales are used. The proprietor will have scales used for weighing spirits in lots of 500 gallons or more tested and their accuracy certified by State, county, or city departments of weights and measures at intervals of not more than six months. The storekeeper-gauger will not permit the use of any scales not so tested or which upon testing are found to be inaccurate.

§ 235.294 Necessity for accuracy. It is absolutely necessary that the scale or measuring device used for determining the contents of a bottling tank be accurate and precise, for ascertainment of the correct amount of tax due on taxable products to be bottled therefrom is dependent thereon. The assistant regional commissioner should, after the initial test is made, require further tests from time to time to determine whether the scale or measuring device is still accurate.

§ 235.295 Inaccurate documents. Where the assistant regional commissioner's examination, or the inspector's report, discloses discrepancies in the qualifying documents, the inaccurate or incomplete documents will be returned to the proprietor for correction. A record will be kept of all bonds so returned.

§ 235.296 Defective construction. Where it is found that the construction of the rectifying plant or its equipment does not conform to the requirements of the law and this part, the assistant regional commissioner will inform the proprietor concerning the defects, and further action will be held in abeyance pending correction thereof.

§ 235.297 Law violation record. Before approving any bond or consent of surety given by any individual, firm, partnership, corporation, or association, in respect to the business of rectifiers, the assistant regional commissioner will cause such inquiry or investigation as may be deemed necessary to ascertain whether any individual, firm, partnership, corporation, or association, or any person owning, controlling, or actively participating in the management of the business has been convicted of, or has compromised, an offense of the nature specified in § 235.194. Where record is found of the conviction or compromise of such an offense, the assistant regional commissioner will approve or disapprove the bond or consent upon the basis of his findings: *Provided*, That if the bond or consent is disapproved, the principal may appeal the assistant regional commissioner's action to the Director, Alcohol and Tobacco Tax Division. Where an appeal is taken to the Director, Alcohol and Tobacco Tax Division, the assistant regional commissioner will furnish the Director, Alcohol and Tobacco Tax Division, with full information respecting the reasons for disapproval including the nature and place of the offense, the names of the

offenders and the date of conviction or acceptance of an offer in compromise. (68A Stat. 680; 26 U. S. C. 5551)

§ 235.298 Approval of qualifying documents. If the assistant regional commissioner finds, upon examination of the inspection report, that the person seeking to qualify as a rectifier has complied in all respects with the requirements of the law and this part, and if the rectifier's bond (Form 34) may be properly approved under § 235.297, and if the applicant is entitled to a permit, he will assign a registry number to the rectifying plant in accordance with § 235.299, note his approval on all copies of the rectifier's bond, consent, notice and plat and plans, and dispose of the qualifying documents and inspectors' reports in accordance with § 235.301. The issuance of a permit should be withheld pending approval of the notice, bond, and other qualifying documents required under the internal revenue laws.

(68A Stat. 680; 26 U. S. C. 5551)

§ 235.299 Registry numbers. Rectifying plants will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new rectifying plants will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued rectifying plants will not be reassigned to other rectifying plants. In the case of a successor taking over the rectifying plant, the same registry number may be retained. In the case of a change in location of the rectifying plant within the same State, the same registry number may be retained.

§ 235.300 Disapproval of qualifying documents. If the assistant regional commissioner finds that the applicant has not complied in all respects with the requirements of the law and this part, or that the situation of the rectifying plant is such as would enable the rectifier to defraud the United States, or that the bond should be disapproved under § 235.297, he will note his disapproval on the notice, and will dispose of all qualifying documents in accordance with § 235.301.

(68A Stat. 680; 26 U. S. C. 5551)

§ 235.301 Disposition of qualifying documents. Where the assistant regional commissioner approves the qualifying documents, he will forward to the applicant one copy of the documents with the original of the basic permits (Forms 1638, and 1642, if any) issued pursuant to Regulations 1 (27 CFR Part 1) issued under the Federal Alcohol Administration Act. If the qualifying documents are disapproved, the assistant regional commissioner shall note his disapproval on all copies of the notice with brief statements of his reasons therefor, and return to the applicant one copy of the disapproved notice, together with all copies of the qualifying documents and all copies of the bond without action thereon. If the applicant is not entitled to a basic permit, the assistant regional commissioner will, upon disapproval of

the application therefor, return all copies of the qualifying documents to the applicant without action thereon.

§ 235.302 Notification of district director. Upon approval of the notice, plat, and plans, bond and other qualifying documents, the assistant regional commissioner will notify the district director of the district in which the premises are located, on Form 1411 or otherwise, to insure the payment of special taxes as required by this part. District directors will not issue special tax stamps to rectifiers until such notice has been received from the assistant regional commissioner.

CHANGES SUBSEQUENT TO ORIGINAL ESTABLISHMENT

§ 235.303 Procedure applicable. The provisions of §§ 235.298 through 235.302 respecting the action required of assistant regional commissioners in connection with the original establishment of rectifying plants will be followed, to the extent applicable, where there is a change in the individual, firm or corporate name of the rectifier, or the trade name or style, or where the rectifying plant is to be operated initially as an alternating proprietorship, or where there is a change in proprietorship, location, premises, construction, apparatus and equipment of the rectifying plant, or where operations are permanently discontinued.

§ 235.304 Applications covering changes. Where an application covering changes in rectifying plant buildings or rooms, or in the apparatus of equipment, is approved by the assistant regional commissioner, he will forward one copy to the rectifier.

ADDITIONAL AND SUPERSEDING BONDS AND CONSENTS OF SURETY

§ 235.305 Procedure applicable. The procedure prescribed in this subpart for the approval of bonds and consents of surety submitted in connection with the establishment of rectifying plants will, to the extent applicable, govern the approval and disapproval of additional and superseding bonds, and consents of surety.

SUBPART P—TERMINATION OF BONDS

§ 235.315 Termination of rectifier's bond. The rectifier's bond, Form 34, is a continuing bond and, therefore, continues in effect for an indefinite period, unless terminated. Such bonds may be terminated as to future rectification pursuant to application by the surety as provided in § 235.317 or upon approval of a superseding bond or discontinuance of the business by the principal. Application for notice of termination of the rectifier's bond upon approval of a superseding bond or discontinuance of the business must be filed in duplicate with the assistant regional commissioner.

§ 235.316 Termination of drawback bonds. Bonds given on Form 1581 to cover drawback of internal revenue taxes paid on distilled spirits bottled especially for export, and exported, will be terminated by the assistant regional commis-

sioner when no further withdrawals are to be made thereunder: *Provided*, That the account kept with the bond in accordance with Part 252 of this chapter shows there are no outstanding charges. (68A Stat. 614; 26 U. S. C. 5062)

§ 235.317 Application of surety for relief from bond. A surety on any bond may at any time in writing notify the principal and assistant regional commissioner, in whose office the bond is on file, that he desires after a date named, which shall be at least sixty days after date of notification, to be relieved of liability under said bond. The notice shall be executed in triplicate by the surety, who shall deliver one copy to the principal and the other two to the assistant regional commissioner. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved in the case of a rectifier's bond, Form 34, from liability for products rectified wholly subsequent to the date named in the notice, and in the case of drawback bonds, Form 1581, from liability for distilled spirits withdrawn for export wholly subsequent to such date. This notice may not be given by an agent of the surety unless it is accompanied by a power of attorney duly executed by the surety authorizing him to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department. The surety must also file with the assistant regional commissioner an acknowledgment or other proof of service of such notice on the principal.

§ 235.318 Action on application for notice of termination of rectifier's bond. When an application for notice of termination of a rectifier's bond as to future rectification is filed with the assistant regional commissioner in a case where a superseding bond has been approved, or the principal has discontinued business, as provided in § 235.315, the assistant regional commissioner will make a complete examination of records to determine whether there is any liability outstanding against the bond. He will also ascertain from the district director whether there are any outstanding, unpaid assessments or demands for taxes on products rectified under the bond. If it is found that outstanding assessments, or demands for payment, of taxes chargeable against the bond have not been paid or otherwise settled, or that all taxes have not been paid on all spirits and wines subjected to any act of rectification during the period covered by the bond, the assistant regional commissioner will disapprove the application, unless the liability is settled. If the assistant regional commissioner finds that the rectifier's bond may properly be terminated, he will issue notice of termination thereof in accordance with § 235.319.

§ 235.319 Notices, Forms 1490 and 1491. When the assistant regional commissioner has determined that an application for termination of a rectifier's bond (Form 34) as to liability for

future rectification, may properly be approved, he will execute Form 1490, where a superseding bond has been approved, or Form 1491, where the principal has discontinued business, and will forward one copy to each obligor on the bond.

§ 235.320 Release of collateral. The release of collateral pledged and deposited with the United States to support bonds required by this part will be in accordance with the provisions of Department Circular No. 154, revised (31 CFR Part 225), subject to the conditions governing the issuance of notices on Forms 1490 and 1491 of the termination of such bonds. On approval of an application for the issuance of notice of termination of a rectifier's bond supported by collateral security, the assistant regional commissioner will fix the date or dates on which a part or all of the security may be released. In fixing such date, which ordinarily will be not less than six months from the date of determining that there is no outstanding liability against the bond, the assistant regional commissioner will satisfy himself that the interest of the Government will not be jeopardized. Collateral pledged and deposited to support a rectifier's bond, Form 34, will not be released by the assistant regional commissioner until all spirits which have been subjected to any act of taxable rectification while the bond was in force and effect, have been taxpaid. At any time prior to the release of such collateral security the assistant regional commissioner may, in his discretion, and for proper cause, further extend the date of release of the security for such additional length of time as in his judgment may be appropriate. Collateral pledged and deposited to support a drawback bond, will ordinarily be released by the assistant regional commissioner upon issuance of notice of release of the bond, Form 1491.

(40 Stat. 1148, as amended; 6 U. S. C. 15)

SUBPART Q—INSTRUMENTS

§ 235.330 General requirements. Rectifiers must provide themselves with proper instruments for gauging or determining the alcoholic content of spirits and wines.

(68A Stat. 651, 680; 26 U. S. C. 5281, 5552)

§ 235.331 Hydrometer set. For use in determining the proof of distilled spirits and rectified spirits to which saccharine or other solid matter has not been added, rectifiers will provide themselves with an accurate hydrometer set, consisting of cup with thermometer and the necessary stems.

(68A Stat. 651, 680; 26 U. S. C. 5281, 5552)

§ 235.332 Ebulliometer. Except as provided in § 235.570, rectifiers will provide themselves with an approved ebulliometer or a small still for use in determining the alcoholic content of blended whiskies containing sherry wine, prune juice, caramel, glycerine, etc., and of wines, cordials, liqueurs, and other rectified products containing saccharine or other solid matter. The following ebulliometers have been approved by the Director, Alcohol and Tobacco Tax Division, for use in determining the alcoholic

content of such products: Salleron-Dujardin, Juerst, Lefco, Braun, E. B. Torino (with shield), "TAG" (with shield), Malligand Type (with shield), L'Ebullimeter Levesque (with shield), and Arnaldo-Sala (with shield). The E. B. Torino, "TAG," Malligand Type, L'Ebullimeter Levesque, and Arnaldo-Sala have been approved subject to the condition that they will be used in connection with a shield to protect them from drafts or air currents.

(68A Stat. 651, 680; 26 U. S. C. 5281, 5552)

§ 235.333 *Other instruments.* The Director, Alcohol and Tobacco Tax Division, may authorize the use of other instruments or methods for determining the alcoholic content by volume of such blended whiskies, and of wines, cordials, liqueurs, and similar products.

(68A Stat. 651, 680; 26 U. S. C. 5281, 5552)

§ 235.334 *Accuracy of instruments to be checked.* Internal revenue officers will from time to time check the accuracy of instruments used at rectifying plants. Instructions for use of hydrometer sets and of small stills (or wine sets) will be found in Parts 186 and 240 of this chapter. Ebullimeters will be tested in accordance with the instructions furnished with the instruments. Instructions for the use of approved ebullimeters will be found in Part 240 of this chapter.

SUBPART R—FORMULAS AND PROCESSES

§ 235.345 *Form 27-B Supplemental.* Every rectifier must file with the assistant regional commissioner a statement in detail of each formula and process by which he intends to rectify spirits. A separate Form 27-B Supplemental, in quadruplicate, must be filed for each formula and process, and each formula will be serially numbered beginning with number 1. The form will be prepared in accordance with the instructions printed thereon or issued in respect thereto and as required by this part.

§ 235.346 *Description of formula.* Each formula must show the name of the product, the proof thereof, and all the ingredients composing the formula, but the quantity or percentage of each ingredient need not be given, except as provided in this section. Where the taxability or labeling of the product is affected by the quantities or percentages of the ingredients used, the quantities or percentages of such ingredients shall be specified in the formula. Where vermouth or other wines are used, the percentage thereof by volume of the finished product shall be shown. Where sweetening materials are used in compounding products with such wine, the kind and quantity of the sweetening material shall be shown. Where coloring, flavoring, or blending materials are used, the kind and percentage thereof by volume shall be shown. If intermediate products are made for use in manufacturing finished products for sale, as provided in § 235.491, the formula and process by which both the intermediate products and the finished products are made shall be filed. The assistant regional commissioner may require the quantity or percentage of each ingredient to be specified in any formula when such is deemed necessary to determine the

proper taxability or labeling of the product. Formulas specifying various proofs may be accepted, provided each lot of spirits transferred to a bottling tank is bottled at the same proof. Where the rectifying process will not be completed within ten days, the time required for completion thereof must be shown on Form 27-B Supplemental, and application for approval of such extended process submitted therewith in accordance with Subpart X of this part.

§ 235.347 *Use of alcoholic flavoring material.* Formulas providing for the use of alcoholic flavors or flavoring extracts under the provisions of §§ 235.64 through 235.66, in addition to showing the kind of and percentage (by volume) of such material used, must specify the percentage of alcohol (by volume) contained therein. Any formula requiring the use of flavoring materials in excess of the 2½ percent limitation provided in § 235.64 shall show the quantity of alcohol in the finished product derived from flavors or flavoring extracts subject to drawback under sections 5131 through 5134, I. R. C., and flavors or flavoring extracts on which drawback has not been nor will be claimed, and, as to the latter, shall show whether such material is manufactured on rectifying plant premises or obtained from a manufacturer, and if obtained from a manufacturer, whether there will be on file at the rectifying plant a statement by the manufacturer that drawback under sections 5131 through 5134, I. R. C., has not been nor will be claimed on such material. Such statement shall be signed by the manufacturer and immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct." When rectified spirits are bottled or packaged especially for export with benefit of drawback, the rectifier will enter on Form 237 the quantities of each flavoring and blending material used in the product of a particular lot as required by Part 252 of this chapter.

§ 235.348 *Description of process.* The statement of process must set out in sequence each step therein from the dumping of the spirits for rectification to the completion of the finished product. If the process employed is a continuous one, the statement should clearly show the continuity of the steps thereof. Rectifying processes are deemed to be continuous or unbroken where the spirits are carried through the various steps of rectification specified in the approved formula and statement of process as expeditiously as normal, efficient plant operation will permit in the manufacture of a finished product of standard quality. Reasonable intervals of time occurring between the completion of one step and the commencement of another step occasioned by normal plant operation are not deemed to be a break in the continuity of the rectifying process, where such steps are specified in the approved formula and statement of process and the rectifying process is completed within the specified 10-day

limit or such further period of time as may be authorized by the assistant regional commissioner.

§ 235.349 *Changes of formulas and processes.* Where a formula conforming to the requirements of this subpart has been submitted it will not be necessary to submit a new formula if the product is to be put up under another brand name (but not as another class or type), or if the quantity of any ingredient used, other than those the percentage of which is required to be disclosed, is varied from time to time. Where the ingredients composing the formula are changed, however, a new formula must be submitted. Any change in the process of rectification will necessitate the submission of a new Form 27-B Supplemental showing the formula and the changed process. Once an approved formula is superseded by a new formula, the original formula will no longer be used and will be surrendered to the assistant regional commissioner.

§ 235.350 *Disposition of Form 27-B Supplemental.* The assistant regional commissioner will forward all copies of Form 27-B Supplemental to the Director, Alcohol and Tobacco Tax Division. If the form is properly prepared and the process is approved, the Director, Alcohol and Tobacco Tax Division will indicate the tax or taxes due on the finished product, note his approval on the form, and return three copies to the assistant regional commissioner, who will forward one copy to the rectifier and one copy to the storekeeper-gauger assigned to the plant. The approved Forms 27-B Supplemental will be filed in serial order, available for ready reference, by the storekeeper-gauger at the rectifying plant and by the rectifier.

SUBPART S—SPECIAL (OCCUPATIONAL) TAXES

§ 235.360 *Rectifier's special tax.* Every person engaged in business as a rectifier, within the meaning of the term as defined in Subpart C, must file Form 11 with the district director and pay special tax as such. Persons rectifying less than 500 barrels a year, counting 40 proof gallons to the barrel (i. e., less than 20,000 proof gallons), must pay special tax at the rate of \$110 per year, and persons rectifying 500 barrels or more a year (i. e., 20,000 proof gallons or more) must pay special tax at the rate of \$220 per year.

(68A Stat. 615; 26 U. S. C. 5081)

§ 235.361 *Change to higher or lower rate.* A rectifier who has paid the special tax as a rectifier of less than 500 barrels and who exceeds that quantity must immediately pay the special tax due at the higher rate (\$220 per year) to the district director for the full period, and obtain a new special tax stamp. The rectifier may submit the stamp representing the special tax paid at the lower rate to the district director with a claim on Form 843 for redemption thereof. A rectifier who has paid special tax at the higher rate, but actually rectifies less than 500 barrels of spirits during the year, may likewise procure a new special tax stamp at the lower rate (\$110) and submit the stamp representing the tax paid at the higher rate to

the district director with a claim on Form 843 for redemption thereof.

(68A Stat. 615; 26 U. S. C. 5081)

§ 235.362 Liquor dealer's special taxes. Rectifiers who sell distilled spirits or wines must file separate return on Form 11 and pay special (occupational) taxes as wholesale liquor dealer or retail liquor dealer, or both, in accordance with the law and Part 194 of this chapter.

(68A Stat. 615, 618, 621; 26 U. S. C. 5081, 5112, 5122)

§ 235.363 Warehouse receipts covering distilled spirits. Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every proprietor of a rectifying plant who sells, or offers for sale, warehouse receipts for distilled spirits stored in internal revenue bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where warehouse receipts are sold or offered for sale and must file return on Form 11, pay occupational tax as provided in § 235.362, and procure a wholesaler's best permit issued under Regulations 1 (27 CFR Part 1) issued pursuant to the Federal Alcohol Administration Act.

(68A Stat. 615, 618, 621, 624; 26 U. S. C. 5081, 5112, 5122, 5142, 5143)

§ 235.364 Liability not affected by commodity tax exemption. Exemption from the commodity tax on products of rectification does not provide exemption from the special tax as a rectifier, nor from the dealers' special taxes for the sale of rectified spirits.

SUBPART T—PLANT OPERATION

§ 235.370 Restrictions. No operations pertaining to transferring or receiving spirits by pipeline, tank cars, or tank trucks, or other operations required by this part to be conducted under the supervision of an internal revenue officer, shall be carried on at a rectifying plant during other than regular business hours, unless special permission is first obtained therefor from the assistant regional commissioner. Operations which may be conducted in the absence of the internal revenue officer may not however be carried on at a rectifying plant during other than regular business hours unless notice of such operations is first given, in writing, to the storekeeper-gauger. However, these provisions shall not apply to rectifying processes that are automatic and continuous, and do not require any personal handling or other manipulation during such restricted hours. The removal of any package of spirits containing more than 10 gallons is prohibited between sundown and sunrise.

(68A Stat. 636; 26 U. S. C. 5195)

§ 235.371 Operations after regular hours. Where the rectifier needs to dump, filter, or bottle spirits or perform such other operations which may be conducted in the absence of an internal revenue officer, after regular business hours, he shall first give notice thereof, in writing, to the storekeeper-gauger. The storekeeper-gauger shall forward a copy of the notice to the assistant regional commissioner.

§ 235.372 Emergency operations under supervision. Except as provided in § 235.371, the operations at rectifying plants will be restricted to regular business hours, unless it should be found necessary to permit operations after such hours to meet reasonable demands or temporary emergency conditions. An emergency will be understood to mean a condition which could not reasonably be obviated. Where bona fide emergencies exist, assistant regional commissioners will assign officers to duty outside of regular hours only after thorough investigation of the facts in each case and only in the event the necessary personnel can be assigned without undue interference with other activities.

§ 235.373 Expedition required. It is not necessary to keep internal revenue officers at plants where no operations are being conducted, and one officer may be assigned to supervise several small plants. Where an internal revenue officer is not assigned continuously at a rectifying plant, rectifiers will, upon arrival of the officer, be required to conduct the operations requiring his supervision as expeditiously as possible in order that the officer may not be required to remain at the rectifying plant any longer than necessary.

§ 235.374 Operations without supervision. Where the volume of business at a rectifying plant is insufficient to warrant the assignment of an internal revenue officer to continuous duty at the plant during regular business hours, the rectifier may conduct such operations in the absence of the officer as are not required by this part to be done under the supervision of such an officer: *Provided*, That the assistant regional commissioner may in his discretion require such other operations to be conducted in the presence of the internal revenue officer as he deems necessary for the protection of the revenue.

SUBPART U—RECEIPT OF SPIRITS

§ 235.380 Taxpaid liquors only. Only distilled spirits, wines, and other liquors that have been previously taxpaid at the rates provided by law may be received at a rectifying plant.

§ 235.381 Deposit in receiving room. Except as provided in §§ 235.99, 235.382, and 235.383, all distilled spirits, wines, and other liquors received at a rectifying plant shall be immediately placed in the receiving room. The spirits must remain in the receiving room (or storage tank located in the rectifying room) until notice is given on Form 122 that the same will be removed to the rectifying room for dumping and rectification, or on Form 230 that the same will be removed to the bottling room, or to the rectifying room where no separate bottling room is provided, for dumping and bottling without rectification, except that unrectified bulk spirits may be shipped or removed from the receiving room without giving notice.

§ 235.382 Receipt by tank car, tank truck, or tank. Where distilled spirits are received in tank cars or tank trucks or wines are received in tank cars, tanks, or tank trucks, they must be transferred directly from such containers into storage, processing or bottling tanks: *Pro-*

vided, That such transfers of distilled spirits must be under the supervision of the storekeeper-gauger. When such spirits are transferred directly into processing or bottling tanks, the rectifier must give notice on Form 122 or Form 230, as the case may be, immediately after the tank cars, tanks, or tank trucks are emptied. Spirits may be received in railroad tank cars only if the premises of the rectifier are equipped with suitable railroad siding facilities. Before permitting spirits to be transferred from a tank car or tank truck into storage, processing, or bottling tanks, the storekeeper-gauger will see that the tank car or tank truck bears evidence of proper taxpayment. When spirits are transferred into storage tanks, the officer shall open and close the Government locks, but it shall be the duty of the proprietor to manipulate the stopcocks or valves controlling the flow of the spirits. Upon completion of the transfer of the spirits to storage, processing, or bottling tanks the report of gauge, Forms 237, 1440 or 1520, as the case may be, delivered to the storekeeper-gauger from the consignor premises shall be delivered by him to the rectifier.

(68A Stat. 634; 26 U. S. C. 5194)

§ 235.383 Receipt by pipeline. Where spirits are received at a rectifying plant by pipeline from a contiguous distillery, internal revenue bonded warehouse, industrial alcohol plant or warehouse, bonded winery, or another rectifying plant, they shall be conveyed directly into one or more storage tanks, unless the quantity of spirits so transferred is to be conveyed directly into one or more bottling tanks for bottling without rectification, or into one or more processing tanks if the inlets to such tank or tanks are equipped for locking with Government locks: *Provided*, That where the pipeline is equipped with a valve in the contiguous premises, which may be locked with a Government lock, the inlets to such tank or tanks in the receiving rectifying plant need not be equipped for locking. Such spirits may be successively deposited into a processing tank, or into a storage tank subject to the restrictions of § 235.388. When spirits are transferred into such tanks, the storekeeper-gauger and the rectifier shall follow the procedure specified in § 235.382 insofar as it is applicable.

(68A Stat. 634, 651; 26 U. S. C. 5194, 5281)

§ 235.384 Certificate of taxpayment or wholesale liquor dealer's stamp. When distilled spirits are received in a tank car or tank truck at a rectifying plant, the rectifier shall at the time the car or truck is emptied seal the certificate of taxpayment, Form 1595, or the wholesale liquor dealer's stamp, as the case may be, by cutting out all of that portion of the certificate or stamp within the border. The rectifier shall then send the cut-out portion of the certificate or stamp to the assistant regional commissioner of the region in which the rectifying plant is located, and shall obliterate the remainder of the certificate or stamp. If the tank car or tank truck is received without the certificate or wholesale liquor dealer's stamp attached thereto, the rectifier shall note such fact on the

bill of lading (if any) or on Form 237, 1440 or 1520, as the case may be, covering such tank car or tank truck and immediately notify the assistant regional commissioner, who will cause such inquiry to be made respecting the shipment and receipt of the car or truck as he may deem appropriate. Where a tank car or tank truck with the certificate or wholesale liquor dealer stamp missing is received at a rectifying plant, the storekeeper-gauger will furnish a complete report to the assistant regional commissioner.

§ 235.385 Comparison of scalped certificate or wholesale liquor dealer's stamp. The assistant regional commissioner will compare the cut-out portion of the certificate of taxpayment, Form 1595, with the copy of the application therefor, Form 1594, forwarded to him by the district director at the time Form 1595 was issued. The certificate and the application will be compared as to serial number, names of vendor and vendee, number of gallons, amount of tax, etc., and any discrepancy will be investigated. If a wholesale liquor dealer's stamp has been used in lieu of a certificate, Form 1595, the assistant regional commissioner will compare the cut-out portion of the stamp with the copy of the Form 1520 or 237 forwarded to him at the time the stamp was issued, and any discrepancy will be investigated.

§ 235.386 Disposition of gauge report; tank car or tank truck. When distilled spirits received in a tank car or tank truck are run into a storage tank, the report of gauge, Form 237 (in the case of spirits received from another rectifying plant), Form 1440 (in the case of alcohol), or Form 1520 (in the case of other spirits) delivered to the rectifier by the storekeeper-gauger, shall be attached to such storage tank. The rectifier shall enter the date and quantity of each removal from the storage tank in a blank space on the report of gauge. The report of gauge shall be kept on the tank until such time as a quantity equivalent to that covered by such report has been withdrawn from the tank. The report shall then be filed by the rectifier, available for inspection by internal revenue officers. Where the spirits are run directly from a tank car into a bottling tank for bottling without rectification, the proprietor shall make a note to that effect on the report of gauge, and attach it to the tank. Upon completion of the bottling, Form 237, 1440 or 1520 will be filed by the proprietor. Where the entire quantity of spirits received is run into more than one storage tank, or into more than one bottling tank, the rectifier will prepare additional copies of the report of gauge for attachment to each such tank, and note thereon the quantity run into each tank. If the spirits are transferred directly from the tank car into one or more processing tanks, the rectifier will note on the report of gauge the quantity run into each tank and file it.

(68A Stat. 651, 652; 26 U. S. C. 5281, 5285)

§ 235.387 Disposition of gauge report; pipeline. When spirits received by pipeline are run into a storage tank, the report of gauge, Form 1440, 1520, or modified 237, as the case may be, delivered

to the rectifier by the storekeeper-gauger, shall be attached to the storage tank. The rectifier shall enter the date and quantity of each removal from the storage tank in a blank space on the report of gauge. The report of gauge shall be kept on the tank until such time as a quantity equivalent to that covered by such report has been withdrawn from the tank. The report shall then be filed by the rectifier, available for inspection by internal revenue officers. Where the spirits are run directly by pipeline into a bottling tank, for bottling without rectification, the report of gauge will be attached to the tank. Upon completion of the bottling, Form 1440, 1520, or modified 237, as the case may be, will be filed by the proprietor. Where spirits are received by pipeline from a rectifying plant and transferred directly into a bottling tank, the rectifier shall attach the report of gauge, Form 230 or Form 237, received from the proprietor of the transferring rectifying plant to the bottling tank. Upon the completion of the bottling, Form 230 or Form 237 will be disposed of in accordance with § 235.703. Where the entire quantity of spirits received is run into more than one storage or bottling tank, the rectifier will prepare additional copies of Forms 230, 237, 1440 or 1520, as the case may be, for attachment to each such tank, and note thereon the quantity run into each tank. If the spirits are transferred directly by pipeline into one or more processing tanks, the rectifier shall make a notation to that effect on the report of gauge and file it. The spirits transferred by pipeline may not be used by the rectifier prior to attachment of the above forms to the tank or tanks into which the spirits are directly conveyed.

(68A Stat. 651, 652; 26 U. S. C. 5281, 5285)

§ 235.388 Mixing of different spirits prohibited. Spirits of less than 190 degrees of proof, received in tank cars or by pipeline, which were produced from different materials, or by two or more distillers, or at two or more distilleries, or which have been subjected to different acts of rectification, or which differ in kind according to the standards of identity established under the Federal Alcohol Administration Act, or which are otherwise heterogeneous, may not be mingled in a storage tank. Examples of spirits which are otherwise heterogeneous are spirits which have been quick-aged and spirits which have not been quick-aged, and spirits which have been stored in different kinds of cooperage. Such spirits of the same composition, produced at approximately the same proof by the same distiller at the same distillery, and differing in age (a) not more than 6 months in the case of spirits more than 2 years of age, (b) not more than 60 days in the case of spirits more than 1 year and not more than 2 years of age, or (c) not more than 30 days in the case of spirits one year of age or less, and packaged in the same kind of cooperage will be presumed to be homogeneous, and may be mingled in a storage tank. Where it is desired to mingle spirits falling within more than one of the age categories specified, the difference in age allowable shall be deter-

mined according to the age of the younger spirits. For example, if spirits not more than one year of age are mingled with spirits more than 1 year old, the spirits must not vary in age more than 30 days. Spirits of 190 degrees of proof or more, received in tank cars, tank trucks, or by pipeline, distilled from the same class of materials (such as grain) will be presumed to be homogeneous and may be mingled in a storage tank. Taxpaid wines of the same kind and taxable grade may be mixed together in a storage tank to facilitate handling.

(68A Stat. 651, sec. 5, 49 Stat. 981, as amended; 26 U. S. C. 5281, 27 U. S. C. 205)

§ 235.389 Packages bearing evidence of tampering. When the rectifier, upon inspection of spirits, discovers that any package or other container bears evidence that illicit untaxed spirits have been substituted for the original contents or any part thereof, or that the character of the original contents has been changed by adulteration or in any other manner, except by diminution in quantity due to leakage or evaporation, he will immediately report the matter to the assistant regional commissioner and set aside the package pending advice from the assistant regional commissioner as to its disposition.

SUBPART V—GAUGING AND DUMPING SPIRITS, AND RECORD OF RECTIFICATION

§ 235.400 Notice of dumping, Form 122. When the rectifier desires to dump spirits for rectification and the spirits are not to be used immediately in their entirety in preparing a batch of rectified spirits or wines, he will prepare Form 122, in triplicate, giving all applicable information in accordance with the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto and as required by this part. The rectifier will carefully gauge each package of spirits and where the spirits are of the same composition and have been produced by the same distiller at the same distillery and were filled on the same date and withdrawn on the same date, he will make a consolidated entry on Form 122 for all such packages. Several lots may be reported on one Form 122. Where practicable, in lieu of making an individual gauge of each package of a lot of like spirits, as described herein, the spirits may be dumped into a tank mounted on scales or otherwise equipped with a suitable device whereby the actual contents can be accurately determined and gauged and the details thereof entered on Form 122. Where packages are transferred to the rectifying plant directly upon taxpayment from a distillery or internal revenue bonded warehouse and dumped for rectification within 30 days after receipt, the withdrawal gauge will be considered as satisfying the requirement that the spirits shall be gauged when dumped for rectification and the rectifier will make a consolidated entry for each lot of such like spirits. Where the spirits are so dumped on the withdrawal gauge, if the rectifying plant is equipped with processing tanks mounted on scales, the spirits may be dumped and gauged

by weight in such processing tanks. In such case, the proof gallons determined by such gauge shall also be reported on Form 122. The difference in proof gallons between the withdrawal (taxpayment regauge) and such tank gauge shall also be reported on Form 122. If the spirits are to be drawn from the storage tank, the rectifier will likewise execute Form 122 giving all the information applicable. When spirits are received by pipeline or withdrawn from storage tanks and run into one or more processing tanks, or when spirits are received by tank car and run into one or more processing tanks, the rectifier will execute Form 122 giving all applicable information. Each Form 122 will be given a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.401 Batch record, Form 122. When the rectifier desires to compound a batch of rectified spirits, he will prepare Form 122 as a batch record, in triplicate, giving a description of the spirits in accordance with the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereof and as required by this part. Form 122 will be so used (a) to report the dumping of spirits which are to be used immediately and in their entirety in preparing a batch of a rectified product, (b) to report the use of spirits dumped pursuant to earlier Forms 122 and retained in processing tanks or receptacles, in preparing a batch of a rectified product, and (c) to report any combination of (a) and (b) used in preparing a batch of a rectified product. Each package of spirits, withdrawal from storage tank, or receipt by pipeline which is to be used immediately in its entirety in preparing a batch of a rectified product shall be gauged in accordance with the provisions of § 235.400.

§ 235.402 Records of coloring, flavoring, and blending materials. The proprietor will record, on Form 122 (batch record) the use of alcoholic flavors or flavoring extracts manufactured on premises other than a rectifying plant. Commercial records will be maintained by the proprietor for recording the use of non-alcoholic blending, coloring or flavoring materials used in a rectified product.

§ 235.403 New or changed composition of products. Whenever the rectifier desires to manufacture a new product, or to change the composition of a product to be manufactured under a previously used formula, he shall notify the storekeeper-gauger in writing prior to beginning the process of rectification.

§ 235.404 Packages bearing wholesale liquor dealer's stamps. Where spirits, including alcohol, contained in packages bearing wholesale liquor dealer's stamps are to be dumped, the rectifier will cut out with a sharp instrument that portion of each stamp extending from the top to the bottom and embracing the entire width between the borders of the stamp. The scalped portions of the stamps will be securely attached by means of a staple, eyelet, or similar device

to a slip of paper in such manner that the data thereon may be readily examined, and such slip of paper bearing the cut-out portions of the stamps will be securely stapled or otherwise similarly attached to the original Form 122.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.405 Rectified spirits. If packages of rectified spirits are to be dumped, that portion of each rectified spirits stamp bearing the serial number, the date, the name of the rectifier, the proof gallons, the class, and the district and State, will be cut out and attached to Form 122 in the same manner as provided in § 235.404.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.406 Imported spirits. Where packages of imported spirits are to be dumped, that portion of each customs stamp showing the kind of spirits, the serial number, date of issue, name of the importer, proof gallons, and the name and district of the collector of customs, will be cut out and attached to Form 122 in the same manner as provided in § 235.404.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.407 Lost or mutilated stamps. When a stamp has been lost or mutilated, so that the required portion thereof cannot be returned, a statement setting forth all the facts in the case will be made by the rectifier and attached to each copy of Form 122. Such statement shall be signed by the rectifier and immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct."

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.408 Notation on Form 122. When spirits are received in a tank car or tank truck bearing a certificate of taxpayment, Form 1595, or a wholesale liquor dealer's stamp, or where spirits are received by pipeline, or where spirits in stamped bottles are to be dumped, an explanatory statement will be made in the columns provided for the descriptions of stamps on Form 122, as "Form 1595, Serial No. _____, dated _____, heretofore submitted," or "Wholesale liquor dealer's stamp, Serial No. _____, dated _____, heretofore submitted," or "Form 1520, dated _____, pipeline transfer on Form 1595, Serial No. _____," or "Form 1440, dated _____, pipeline transfer on Form 1595, Serial No. _____," or "In stamped bottles," as the case may be. If the spirits received by pipeline were taxpaid by the use of distilled spirits stamps, an explanatory statement will be made in the columns provided for the description of stamps on Form 122, as "Distilled spirits stamps, Form 1520 dated _____," or "Distilled spirits stamps, Form 1440 dated _____," as the case may be.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.409 Submission to officer. The rectifier, after preparation of part 1 of Form 122, and after completion of his certificate in part 2, will place the original and one copy of Form 122 on the storekeeper-gauger's desk and there-

upon proceed with the operation covered by such notice: *Provided*, That where straight whiskies and pure fruit brandies are to be blended exempt from tax all copies of Form 122 must be presented to the officer for verification prior to the dumping of such spirits in the manner provided in §§ 235.466 through 235.475. The storekeeper-gauger, after endorsing the copies, will return them to the rectifier.

§ 235.410 Marking processing tanks. In every case the rectifier will attach the copy of Form 122 not submitted to the storekeeper-gauger to the processing tank or receptacle in which the spirits covered by such form were deposited. Where the entire quantity of spirits covered by one Form 122 is deposited in more than one processing tank or receptacle the rectifier will attach such Form 122 to one of the tanks or receptacles and show on Form 122 the serial numbers of the other tanks or receptacles in which the spirits were deposited. Such other tanks or receptacles will be marked by the rectifier to show the serial number of the Form 122 pursuant to which the contents thereof were dumped or rectified.

§ 235.411 Disposition of Form 122. The rectifier, upon return of the two copies of Form 122 from the storekeeper-gauger, will enter the balance of the information in part 1, on all copies of Form 122 and will forward the original immediately to the assistant regional commissioner. In those instances where the Form 122 covers the dumping of spirits the slip bearing the cut-out portions of the stamps, or affidavits in lieu thereof, shall be attached to the original. When the form is used as a notice of dumping only, the rectifier will enter, in part 4 of the copies retained by him, the quantity dumped for rectification, as reported in part 1, as the quantity to be accounted for and such quantity will be subsequently balanced by the entry of totals from one or more later Forms 122, prepared as rectification batch records, adjusted as necessary by gain or loss. When the form is used as a rectification batch record the rectifier will enter, in part 4 of the copies retained by him, the batch total, as reported in part 1, as the quantity to be accounted for and such quantity will be subsequently balanced by the entry of totals from one or more Forms 122 or 237, adjusted as necessary by gain or loss. After completion of part 4 the rectifier will file the copy of Form 122, endorsed by the storekeeper-gauger, at the rectifying plant available for inspection by internal revenue officers. The third copy of each Form 122, which is attached to the processing tank or receptacle in which the spirits covered thereby were deposited, will be destroyed upon the emptying of the tank.

§ 235.412 Entire package to be dumped. A portion of a package may not be dumped for rectification. Where it is desired to rectify a quantity of spirits less than a full package, the entire package must be dumped into a processing tank or receptacle and the quantity which it is desired to rectify at that time must be removed from such tank or receptacle to another processing tank for

rectification. The rectifier shall attach to the first processing tank or receptacle, into which the full package was dumped, a copy of the Form 122 pursuant to which such spirits were dumped. Where small quantities of rum, sherry wine, or other liquors are to be used for flavoring purposes from time to time, a statement to that effect shall be made on Form 122 covering the gauge and dumping of the packages, unless the entire quantity is to be used within 10 days from the date of dumping. No larger quantities of liquor to be used for flavoring purposes shall be dumped than necessary for a reasonable period, except that not less than an entire original package (barrel or keg) may be dumped. No liquors except small quantities of those used for flavoring and similar purposes shall be retained in processing tanks or receptacles for an indefinite period.

§ 235.413 *Special authorization required for return of spirits to receiving room.* When spirits have been removed to the rectifying room they may not be returned to the receiving room, except upon special authorization of the assistant regional commissioner. The assistant regional commissioner will authorize the return of spirits from the rectifying room to the receiving room without payment of rectification tax only where reasonable cause for such action is shown and he is satisfied that the spirits have not been subjected to any act of rectification.

§ 235.414 *Destruction of stamps, marks, and brands on spirits packages.* When packages of distilled spirits are emptied all stamps, except the scalped portions thereof attached to Form 122, and all marks and brands which such packages are required by law to bear, must be completely effaced and obliterated. This should be done immediately upon completion of the dumping, draining, and rinsing of the packages. Packages from which all stamps, marks, and brands have not been completely effaced and obliterated are subject to forfeiture.

(68A Stat. 603; 26 U. S. C. 5010)

§ 235.415 *Destruction of certificate or wholesale liquor dealer's stamp.* Certificates of taxpayment, or wholesale liquor dealer's stamps, affixed to tank cars or tank trucks of distilled spirits, except the portion thereof scalped for submission to the assistant regional commissioner, must likewise be immediately destroyed when such cars or trucks are emptied.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.416 *Destruction of marks and labels on wine containers.* When packages of wines are emptied by a rectifier marks and labels which such packages are required by law and regulations to bear must be destroyed by scraping or obliteration immediately the packages are emptied. All labels and marks required to be affixed to tank cars, tanks, tank trucks, or similar containers of wine must also be scraped or obliterated immediately such containers are emptied.

§ 235.417 *Rinsing of barrels.* When packages are dumped for bottling, the barrels and char and wood chips, if any,

contained therein must be thoroughly rinsed with water. When packages of distilled spirits which were rinsed in the internal revenue bonded warehouse at the time they were dumped for taxpayment are dumped for bottling, the barrels, char and wood chips contained therein must be thoroughly rinsed with water of a temperature not greater than that of the rinse water used at the time of taxpayment as shown by the marking on the barrels. The rinse water obtained at the time of dumping for bottling may be used to reduce the proof of spirits dumped from such barrels in the rectifying plant. When packages containing rectified spirits exempt from the rectification tax are dumped for bottling, the barrels and char contained therein must be thoroughly rinsed and the rinse water obtained may be used to reduce the proof of spirits dumped from such barrels in the rectifying plant. Any rinse water remaining after reduction must be poured upon the ground or into a sewer and may not be mixed with spirits dumped from other packages: *Provided*, That where rectified spirits or products subject to the rectification tax are manufactured, such remaining rinse water may be used in spirits or products to be rectified notwithstanding that the spirits so reduced may differ in composition from the spirits dumped from the barrels rinsed. In the case of packages not rinsed in the internal revenue bonded warehouse at the time of taxpayment and in the case of packages containing rectified spirits on which the rectification tax has been paid, the barrels, char and wood chips contained therein must be thoroughly rinsed with water. Except as provided in § 235.699, the rinse water obtained from such barrels may not be used to reduce the proof of spirits dumped from such barrels in the rectifying plant, but must be poured upon the ground or into a sewer. Char and wood chips dumped from packages must be burned on the premises of the rectifying plant, or, if such burning is not practicable, treated with kerosene before removal from the premises. Where kerosene is used, it must be sprayed or sprinkled on the materials, using not less than 1 gallon of kerosene to each 100 pounds of materials, in such manner as to preclude the abstraction of potable spirits from any part of the materials after removal from the premises. This will be effected by stirring or agitating the materials while the kerosene is being applied. Such burning or treating of materials must be done under the supervision of an internal revenue officer. The assistant regional commissioner may authorize any other disposition of the materials that will effectively prevent recovery of spirits therefrom. Packages which were taxpaid prior to September 1, 1950, may continue to be rinsed in the rectifying plant and the rinse water used in the same manner as permitted prior to September 1, 1950.

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.418 *Taxpayment of rinsings.* In lieu of the procedure prescribed in § 235.417 concerning the rinsing of pack-

ages, the proprietor may rinse and save the rinsings from packages, to any extent desired, which were not rinsed in the internal revenue bonded warehouse at the time of taxpayment and are so marked in accordance with the provisions of Part 225 of this chapter: *Provided*, That the rinsings are run into a closed, locked tank for taxpayment of the proof gallon contents. Such rinsings may be used for reduction purposes, or in the manufacture of rectified spirits or products subject to the rectification tax. When used for reduction, the rinsings must be used in similar spirits. When used in the manufacture of rectified spirits or products, the rinsings may be used with any other appropriate spirits. The tank into which the rinsings are run will be mounted on accurate scales, or equipped with a suitable measuring device whereby the contents can be accurately determined. Upon completion of the rinsing of the packages, the contents of the tank will be gauged by the storekeeper-gauger and the proof gallon contents determined. The gauge of the tank will be made by weight (where the tank is mounted on scales) or by measure. The storekeeper-gauger will prepare Form 1520, in triplicate, covering the gauge of the tank showing the proof gallons, and the kind and age of the spirits from which the rinsings were obtained and will deliver all copies to the proprietor. The proprietor will cancel the necessary number of distilled spirits stamps prescribed by Part 225 of this chapter for the taxpayment of distilled spirits bottled in bond, in the exact amount of the tax due, in the manner prescribed by § 235.419. The proprietor will then attach the stamps to the original copy of Form 1520 and submit it with all copies of Form 1520 to the storekeeper-gauger. The officer will determine that the canceled stamps are in the full amount of the tax due, and will then further cancel the stamps in the manner prescribed by § 235.419, and will execute a certificate on the back of Form 1520 certifying to the receipt and further cancellation of stamps for the amount of tax due. The canceled distilled spirits stamps will be securely attached to the copy of Form 1520 by means of a staple, eyelet, or similar device. The storekeeper-gauger will attach the copy of Form 1520 to which the canceled stamps are attached to the tank, and then release the rinsings for reduction purposes or for use in rectification, as authorized herein. The officer will give one copy of Form 1520 to the proprietor and retain the remaining copy. To identify properly the spirits in the tank, Form 1520 to which the stamps are attached will continue to remain on the tank until all rinsings covered by such stamps have been removed, at which time such form, with the stamps attached, will be forwarded to the assistant regional commissioner. Packages of imported spirits may similarly be rinsed and the rinsings saved if taxpaid in accordance with this procedure. The proprietor shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at the

rectifying plant for taxpayment of rinsings authorized by this section. The form shall be disposed of in accordance with the instructions printed thereon.

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.419 Manner of canceling stamps. At the time of delivery of the stamps to the storekeeper-gauger for payment of the distilled spirits tax, the rectifier shall cancel the stamps by perforation as prescribed herein, or by legibly writing or stamping on each stamp with indelible (India) ink, his name, the registry number of the rectifying plant, and the date of the Form 1520; for example, "John Doe Company, Rectifying Plant No. 63, New Jersey, Form 1520, dated June 1, 1952." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The date of the Form 1520 must not be entered on the stamp in advance of actual use in taxpayment. The assistant regional commissioner may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Co. R. P. 63-NJ-1520-6-1-52." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the proprietor's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (a) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (b) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The storekeeper-gauger, after determining that the canceled stamps are in the full amount of the tax due, will further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp.

(68A Stat. 630; 26 U. S. C. 6804)

§ 235.420 Extracting spirits from wood forbidden. The rinsing with water of a temperature in excess of that provided for in § 235.417, or the steaming of packages, char or wood chips, if any, contained therein, for the purpose of extracting spirits from the staves and heads of the packages or from the char or wood chips, is forbidden, unless such rinse water is immediately destroyed. Likewise, such barrels may not be filled or partially filled with water and permitted to stand for the purpose of extracting spirits, nor may any other method or process, except as authorized

in § 235.417, be used to extract spirits from the barrels.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.421 Use of original packages as processing receptacles. When distilled spirits and wines are to be rectified they must be dumped pursuant to notice on Form 122 into approved processing tanks or receptacles: *Provided*, That where it is desired to rectify the spirits or wines within the original packages, the original stamps and marks shall be completely effaced and obliterated and the packages marked as processing receptacles or quick-aging packages in accordance with § 235.126 or § 235.128, as the case may be, in which case the spirits or wines will be considered as constructively dumped.

§ 235.422 Use of original packages as shipping containers. Original packages may be used as shipping or storage containers for rectified products, provided all of the original stamps and marks are completely effaced from the packages, as required in §§ 235.414 and 235.416, and the packages are marked and stamped as shipping containers in accordance with Subpart HH of this part. Where the original packages have been used as processing receptacles upon destruction of the original stamps and marks, and the marking of the containers as processing receptacles or quick-aging packages, the markings as processing receptacles or quick-aging packages must likewise be completely effaced and the packages marked and stamped in accordance with Subparts FF and HH of this part before they may be used as shipping containers.

SUBPART W—RECTIFICATION

KINDS OF LIQUORS

§ 235.440 Taxpaid liquors only. Only distilled spirits, wines and other liquors that have been previously taxpaid at the rates provided by law, may be used for rectification. No wines or other liquors may be produced by fermentation at a rectifying plant, except that champagne and sparkling wine may be so produced through secondary fermentation of taxpaid wine.

TAX-EXEMPT GIN

§ 235.441 Production. Gin may be produced exempt from the rectifying tax by the redistillation of a pure spirit over juniper berries and other aromatics. Gin so produced must be run into a receiving tank from which it must be promptly (a) drawn into packages, gauged, stamped, and removed to the finished products room or (b) transferred to a bottling tank, gauged, and bottled and removed to the finished products room or be transferred by pipeline, tank car or tank truck to a taxpaid bottling house or rectifying plant. (See §§ 235.615 through 235.672.)

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.442 Definition of pure spirit. The term "pure spirit" is held to mean alcohol or neutral spirits, distilled at or above 190 degrees of proof (whether or not such proof is subsequently reduced), free from impurities, including spirits of

such a nature recovered by redistillation of imperfect gin spirits.

§ 235.443 Type of still. Tax-exempt gin may be produced by a rectifier by redistillation of pure spirits over juniper berries and other aromatics with any type of still where the process is continuous and closed. There may be refluxing of gin spirits, if such spirits are refluxed immediately and directly back to the same gin still with the same charge. There cannot be any redistillation where the vapors do not pass over the juniper berries and other aromatics. Where the gin still is equipped with a by-pass around the berry basket, such by-pass must be removed or provided with a stopcock and kept locked with a Government lock, except when taxable spirits are being produced.

§ 235.444 Juniper berries and other aromatics. The juniper berries may be crushed or mashed, and the other flavoring herbs and substances such as licorice, orange peel, orris root, etc., may be reduced to smaller particles to facilitate extraction, but the materials may not be steeped or percolated with the spirits before distillation is commenced. The juniper berries and other aromatics may be placed in the gin head of the still or in the liquid spirits within the still. Extracts, essences, oils, etc., of such materials may not be used.

§ 235.445 Mixing with other spirits or materials prohibited. Gin produced by redistillation under exemption from tax cannot be mixed with other spirits or treated by the addition or abstraction of any substance or material other than pure water after redistillation, nor can any substance or material other than juniper berries or other aromatics or pure water be added to the spirits prior to or during redistillation.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.446 Reduction and filtering. Gin exempt from the rectifying tax may be reduced with water in the receiving or bottling tanks and may be filtered when necessary to remove materials held in suspension. The use of filters or filter-aids which will remove essential oils or flavoring materials in solution, thereby changing the composition and character of the gin, will subject the product to the rectifying tax. Whether the filtering changes the composition of the gin by removing materials in solution is a question of fact determinable by chemical analysis of samples of the spirits before and after filtration.

(68A Stat. 607, 651; 26 U. S. C. 5025, 5281)

TAXABLE GIN

§ 235.447 Production. Gin produced in any manner or by any means, other than by the redistillation of a pure spirit over juniper berries and other aromatics as provided in § 235.441 (or by original and continuous distillation at a registered distillery), is subject to the rectification tax. Such taxable gin includes gin produced by compounding spirits with juniper oil, extracts, essences, derivatives, or other similar materials; gin produced by steeping juniper berries, aromatics, sloe berries, or other mate-

rials in spirits; gin produced by blending distilled or compounded gin with spirits; gin produced with spirits other than pure spirits, either by distilling or compounding; and gin manufactured by the use of any process or materials other than those specified in §§ 235.441 through 235.446 as exempt from the rectification tax.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.448 *Treatment of gin.* The treatment of gin with any materials or process which changes its composition, subjects the product to the rectification tax. Such treatment includes the flavoring of gin with fruits, sloe berries, extracts, essences, etc., and the manipulation of gin by a physical or chemical process, such as redistillation, filtration or treatment with activated carbon or other materials, which changes its composition or character.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

TAX EXEMPT VODKA

§ 235.449 *Production.* Vodka may be produced exempt from the rectification tax in accordance with the procedure prescribed by § 235.450. Vodka so produced must be either (a) promptly drawn from the processing or receiving tank or tanks into metal, porcelain or glass containers or paraffin-lined containers, gauged, stamped, and removed to the finished products room or (b) transferred from such tank or tanks to a bottling tank, gauged, and then bottled and removed to the finished products room or be transferred by pipeline, tank car, or tank truck to a taxpaid bottling house or rectifying plant. (See §§ 235.615 through 235.672.)

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.450 *Methods of production.* Vodka may be produced, exempt from the rectification tax, from pure spirits which are reduced to not more than 110 degrees of proof and not less than 80 degrees of proof and which, after such reduction in proof, are so treated by one of the following methods as to be without distinctive character, aroma, or taste:

(a) By causing the spirits to flow continuously through a tank or a series of tanks containing at least 1½ pounds of charcoal for each gallon of spirits contained therein at any one time so that the spirits are in intimate contact with the charcoal for a period of not less than 8 hours, not less than 10 percent of the charcoal being replaced by new charcoal at the expiration of each 40 hours of operation, at a rate which will replace at least 6 pounds of charcoal for every 100 gallons of spirits treated;

(b) By keeping the spirits in constant movement by mechanical means in contact for not less than 8 hours with at least 6 pounds of new charcoal for every 100 gallons of spirits;

(c) By purifying or refining the spirits by any other method which the Director, Alcohol and Tobacco Tax Division, finds will result in a product equally without distinctive character, aroma, or taste, and which method has been approved by him.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.451 *Definition of pure spirit.* The term "pure spirit" as used in § 235.450 is held to mean alcohol or neutral spirits, distilled at or above 190 degrees of proof (whether or not such proof is subsequently reduced), and free from impurities.

§ 235.452 *Mixing with other spirits or materials prohibited.* Vodka produced in accordance with § 235.450, under exemption from the rectification tax cannot be mixed with other spirits or treated by the addition or abstraction of any substance or material other than pure water after production, nor can any substance or material other than pure water and that specified in § 235.450 be added to the spirits prior to or during production.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.453 *Reduction and filtering.* Vodka exempt from the rectification tax may be reduced with water in the receiving or bottling tanks and may be filtered when necessary to remove materials held in suspension. The subsequent use of filters or filter-aids which change the composition and character of the vodka will subject the product to the rectification tax. Whether such subsequent filtering changes the composition of the vodka is a question of fact determinable by chemical analysis of samples of the vodka before and after filtration.

(68A Stat. 607, 651; 26 U. S. C. 5025, 5281)

TAXABLE VODKA

§ 235.454 *Production.* Vodka produced at a rectifying plant in any manner or by any means, other than that specified in § 235.450, is subject to the rectification tax.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.455 *Treatment of vodka.* The treatment of vodka, after its production in accordance with § 235.450, with any materials or process which changes its composition, subjects the product to the rectification tax. Such treatment includes the flavoring of vodka in any manner, and the manipulation of vodka by a physical or chemical process, such as redistillation, filtration, or treatment with activated carbon or other materials, which changes its composition or character.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

PURIFYING OR REFINING SPIRITS

§ 235.456 *General.* Except as otherwise provided in Subpart C, the purifying or refining of distilled spirits by any process constitutes taxable rectification. Such purifying or refining processes include redistillation; leaching; filtering or centrifuging; treatment with activated carbon, chemicals or other materials; or any other process which changes the character or composition of the spirits by removal, change, or modification of soluble matter held in solution in the spirits.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.457 *Disposition.* When alcohol or other spirits, such as heads and tails or high and low feints, impure or imperfect spirits and products, residues, etc.,

are purified or refined at a rectifying plant, such purified or refined spirits must be promptly gauged in the receiving tank, Form 237 prepared, and the tax paid by means of rectified spirits stamps in accordance with the procedure set forth in § 235.585 for the payment of tax on spirits in bottling tanks, unless such purified or refined spirits are to be used in the rectifying plant in the manufacture of taxable rectified products, as provided in § 235.459. Materials used for purifying or refining spirits will be disposed of in the manner prescribed by § 235.483.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.458 *Use in manufacturing tax-exempt products.* Where the purified or refined spirits are to be used on the premises in the manufacture of rectified products exempt from the rectification tax, the rectification tax due on such purified or refined spirits must be paid upon completion of the purifying or refining process. The taxpaid spirits may then be used alone or with other spirits of substantially the same kind in the manufacture of tax-exempt finished products under an approved formula and process. Impure or imperfect gin spirits which have been purified or refined and taxpaid upon completion of the purifying or refining process may be used with alcohol or neutral spirits in the manufacture of tax-exempt gin, notwithstanding that the purified or refined spirits retain traces of gin flavoring.

§ 235.459 *Use in manufacturing taxable rectified products.* Where the purified or refined spirits are to be used in the manufacture of taxable rectified products, the rectification tax on the purified or refined spirits must likewise be paid upon completion of the purifying or refining process, unless they are immediately transferred to a processing tank and compounded with other ingredients in the manufacture of such taxable rectified products under an approved formula and process that includes purifying or refining of the spirits and is continuous and unbroken, as defined in § 235.348, in which event the rectification tax will be due and payable only on the finished product. Where the purified or refined spirits are held for subsequent use, the process is not regarded as continuous, and rectification tax will be collected on the purified or refined spirits upon completion of the purifying or refining process, and also on the finished product.

BLENDING

§ 235.460 *Constitutes rectification.* The blending (mixing together) of two or more heterogeneous spirits or wines constitutes rectification and, except as provided in this subpart, necessitates payment of the rectification tax of 30 cents per proof gallon.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.461 *Requirements.* All blending must be done according to an approved formula and process, and in designated processing tanks in the rectifying room. Upon completion of the blending, the blended spirits (unless such spirits are to be further aged or matured, or are to

be held for a period for "marrying," as provided in § 235.528) must be promptly (a) drawn into packages, gauged, tax-paid (unless not subject to tax), stamped, and removed to the finished products room, or (b) transferred to a bottling tank, gauged, taxpaid (unless not subject to tax), and (1) bottled and removed to the finished products room or (2) conveyed by pipeline to a contiguous taxpaid bottling house or rectifying plant or (3) conveyed by pipeline to tank cars or tank trucks for shipment to a taxpaid bottling house or to another rectifying plant.

(68A Stat. 651; 26 U. S. C. 5282)

BLENDING OF WINES

§ 235.462 *Tax-exempt blending.* The blending of taxpaid wines by rectifiers for the sole purpose of perfecting such wines according to commercial standards is, under the law, exempt from the rectifying tax of 30 cents per proof gallon. This exemption from rectification tax is held to apply only where the wines so blended are made from the same kind of fruit. The blending of wine made from one kind of fruit with wine made from another kind of fruit, as for example, the blending of blackberry wine with grape wine, constitutes taxable rectification.

§ 235.463 *Approval of formula and process required.* Where the rectifier desires to blend taxpaid wines for the sole purpose of perfecting such wines according to recognized commercial standards under exemption from the rectifying tax, he will, before commencing such blending, submit his formula and statement of process on Form 27-B Supplemental to the assistant regional commissioner for approval. The rectifier will, in connection with the formula and process, show the kind and type of the wines to be blended, the respects in which they are to be perfected according to recognized commercial standards, and the kind and type of the blended product. The assistant regional commissioner may require the submission of such additional information as he may deem necessary.

§ 235.464 *Taxable blending.* Any blending of wines by rectifiers, except for the sole purpose of perfecting such wines according to recognized commercial standards, as set forth in § 235.462, incurs the rectifying tax. The mixing together of wines of the same kind (class, type, and national origin) and taxable grade to facilitate handling is not taxable blending.

(68A Stat. 665; 26 U. S. C. 5363)

§ 235.465 *Additional wine tax.* Where the taxable grade of wine is increased by blending, additional gallonage wine tax must be paid on the resultant product representing the difference between the tax originally paid on the wine and the tax due on the blended product, as provided in Subpart Y. For example, if 100 gallons of wine containing 20 percent alcohol, on which wine tax in the amount of \$87 has been paid, are blended with 100 gallons of wine containing 12 percent alcohol, on which wine tax in the sum of

\$17 has been paid, making a total wine tax paid on the two wines of \$84, and the resultant product contains 16 percent alcohol, the wine tax on which would amount to \$134, additional wine tax of \$50 must be paid on the blended product, regardless of whether or not the 30-cent rectifying tax is incurred by the blending.

(68A Stat. 609; 26 U. S. C. 5041)

BLENDING OF STRAIGHT WHISKIES AND PURE FRUIT BRANDIES

§ 235.466 *Exemption from tax.* The rectifying tax of 30 cents per proof gallon does not attach to blends made exclusively of two or more pure straight whiskies aged in wood for a period of not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water, and if not reduced below 80 proof, nor to blends made exclusively of two or more pure fruit brandies distilled from the same kind of fruit, aged in wood for a period not less than two years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below 80 proof: *Provided*, That the blending is done under the immediate supervision of the internal revenue officer assigned to the plant or detailed to such duty by the assistant regional commissioner: *And provided further*, That the foregoing prohibition against the addition of coloring or flavoring matter shall not be construed to prevent the blending under the provisions of this part of pure fruit brandies otherwise eligible, to which a small quantity of burnt sugar has been added under the limitations prescribed in Part 221 of this chapter.

(68A Stat. 607; 26 U. S. C. 5025)

§ 235.467 *Application for supervision.* When a rectifier desires to blend two or more straight whiskies or two or more fruit brandies distilled from the same kind of fruit, under exemption from rectifying tax, he will make written application, in duplicate, to the internal revenue officer assigned to the plant. The application will be accompanied by Form 122, in triplicate, properly executed, to show that it is desired to blend straight whiskies aged in wood for a period of not less than four years, or fruit brandies distilled from the same kind of fruit and aged in wood for a period of not less than two years, without payment of rectification tax.

§ 235.468 *Required data.* The application must state, in addition to the data shown in Form 122, the dates when the whiskies or brandies were produced as to each package; the proof to which the blended whisky or brandy is to be reduced; and that no coloring, flavoring, or other substance will be added, except the quantity of pure water necessary to reduce the whisky or brandy to the desired proof.

§ 235.469 *Approval by officer.* The internal revenue officer will make the examination prescribed in § 235.470, and, if satisfied that the whiskies or brandies may be blended free of tax, he will verify Form 122, and return all copies to the rectifier.

§ 235.470 *Officer's examination.* The internal revenue officer who is to supervise the blending will examine the records of the rectifier and the packages covered by the application to ascertain whether they contain straight whisky or fruit brandy and whether such whisky or brandy has been properly taxpaid and aged in wood for four years or more in the case of whisky, or two years or more in the case of brandy, and is in every respect eligible to be blended without payment of the rectification tax, as authorized by law. The officer will likewise examine the tank or tanks into which the whisky or brandy is to be dumped to insure that they do not contain any spirits, coloring, flavoring, or other substance.

§ 235.471 *Supervision of operations.* After the internal revenue officer has completed his examination of the whisky or brandy and the tanks and other equipment, and if satisfied in every respect, he will notify the rectifier that he may proceed with the blending. The officer will supervise the blending of the whiskies or brandies and the reduction of the proof thereof, and upon completion of same will note on each copy of the application that the whisky or brandy was blended and reduced in proof (if reduced) under his supervision, in accordance with the application. The internal revenue officer will then deliver both copies of the application to the rectifier, who will attach a copy to the original of the Form 122 covering the gauge of the spirits which will be forwarded immediately to the assistant regional commissioner, and the other copy to the Form 122 which he will retain for his files at the rectifying plant.

§ 235.472 *Bottling.* If the blended whisky or brandy is to be bottled, an accurate gauge thereof in the bottling tank will be made and reported on Form 237, in duplicate if it is to be bottled directly from such bottling tank, and in triplicate if it is to be transferred to a taxpaid bottling house or another rectifying plant for bottling. (See Subpart Z of this part.) The internal revenue officer approving the form will note in the approval statement thereof "Exempt from tax under section 5025, I. R. C."

§ 235.473 *Packaging.* If the blended whisky or brandy is to be drawn off into packages, an accurate gauge of each package will be made and the details thereof reported on Form 237, in triplicate, as provided in Subpart Z of this part. The internal revenue officer approving the form will note in the approval statement thereof, "Exempt from tax under section 5025, I. R. C." The district director will issue class A (no money value) rectifier's stamps for the packages, and will note in the proper column of each copy of Form 237 the serial number of the stamp to be attached to each package.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.474 *Removal of blended whisky or brandy.* Upon being bottled or packaged and stamped, the blended whisky or brandy must be immediately removed to the finished products room. Upon re-

removal of the whisky or brandy to the finished products room, or the transfer thereof to a taxpaid bottling house or rectifying plant for bottling, Form 237 will be completed and disposed of as provided in Subpart Z of this part.

§ 235.475 *Failure to observe conditions.* Any blending of such whisky or brandy without supervision of an internal revenue officer as outlined in § 235.471, or with the addition of any coloring, flavoring, or other substance, or if reduced below 80 proof, will necessitate payment of the rectifying tax.

TAXABLE BLENDING OF SPIRITS

§ 235.476 *Blending constitutes rectification.* Except as provided in § 235.466, any blending of two or more heterogeneous spirits by a rectifier constitutes taxable rectification. For example, the dumping together of spirits produced by different distillers, or of different ages or blends or rectifications (except as provided in § 235.697), or which differ in kind according to the standards of identity established under the Federal Alcohol Administration Act (27 U. S. C. 205 (e), (f)), or which are not homogeneous, will constitute taxable rectification. Likewise, the dumping together of spirits stored in new charred or re-charred cooperage with spirits stored in plain or reused cooperage, or the mixing of spirits that have been quick-aged or treated with wood chips with spirits not so processed, or the mixing of spirits that have been subjected to any treatment which changes their character with spirits not so treated, will constitute taxable rectification, unless it is established by chemical analysis or organoleptic examination that the composition of the spirits is the same, notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.477 *Dumping for convenience in bottling.* The term "blending" shall not be construed to include the dumping together, for convenience in bottling, of distilled spirits within the descriptions and limitations specified in § 235.697. The spirits so dumped together must be, in fact, of the same composition or character and the purpose of the dumping must be solely for convenience in bottling. The regular dumping together of spirits of different ages, or different blends or rectifications, at the time of bottling is indicative of blending (rectification), and will be made the subject of appropriate inquiry by the assistant regional commissioner to determine whether the mass of spirits dumped together is homogeneous with each of its component parts. The mixing together of wines within the limitations specified in § 235.464 is not taxable blending.

QUICK-AGING

§ 235.478 *Constitutes rectification.* The "quick-aging" of spirits by rectifiers constitutes rectification and necessitates payment of the rectifying tax.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.479 *Quick-aging processes.* The use of any physical or chemical process or any apparatus which accelerates the maturing of the spirits, such as the placing of wood chips in a barrel of whisky by a rectifier, or the application of heat in a barrel by means of a steam coil or other heating device, will subject the spirits to the rectifying tax of 30 cents per proof gallon. Where taxpaid spirits are artificially heated in any manner to a temperature above 80 degrees Fahrenheit, such action is regarded as heating the spirits for the purpose of accelerating the aging process, and will subject the spirits to the rectifying tax.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.480 *Quick-aging containers.* "Quick-aging" may be done by the rectifier pursuant to an approved formula and process only, either in the designated processing tanks or in portable containers, such as barrels and kegs, which need not be permanently marked as in the case of stationary processing tanks, but each such barrel or keg must be marked as provided in § 235.128.

§ 235.481 *Quick-aging as part of rectifying process.* Where spirits are blended, purified, or refined, or otherwise rectified, and then quick-aged, only one rectification tax will be incurred if the blending, purifying, refining, etc., and "quick-aging" are continuous and the quick-aging is a part of the approved formula and process. Where the process is not continuous and the approved formula and process do not include the quick-aging of the spirits, two rectification taxes must be paid, one at the time of blending, purifying, refining, etc., and another upon completion of the "quick-aging" process. For example, if spirits are blended in a processing tank and then drawn off into barrels which are immediately placed in the quick-aging room and subjected to a quick-aging process, the rectification tax need not be paid until the "quick-aging" process has been completed, provided such process is included in the approved formula and process. However, if spirits are blended and later "quick-aged," both operations not being continuous and not included in an approved formula and process, such procedure would constitute two processes of rectification and necessitate payment of the rectifying tax for each process.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.482 *Completion of process of quick-aging.* Upon completion of the approved process the spirits must be immediately (a) packaged, gauged, taxpaid, stamped, and removed to the finished products room, or (b) transferred to a bottling tank, gauged, taxpaid, and (1) bottled and removed to the finished products room or (2) conveyed by pipe line to a contiguous taxpaid bottling house or rectifying plant for bottling or (3) conveyed by pipeline to tank cars or tank trucks for shipment to a taxpaid bottling house or to another rectifying plant.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.483 *Destruction of materials used in quick-aging.* Materials, such as

wood chips, used in a quick-aging process must, upon removal from the process, be burned on the premises of the rectifying plant, or, if such burning is not practicable, treated with kerosene before removal from the premises. Where kerosene is used, it must be sprayed or sprinkled on the materials, using not less than 1 gallon of kerosene to each 100 pounds of materials, in such manner as to preclude the abstraction of potable spirits from any part of the materials after removal from the premises. This will be effected by stirring or agitating the materials while the kerosene is being applied. Such burning or treating of materials must be done under the supervision of an internal revenue officer. The assistant regional commissioner may authorize any other disposition of the materials that will effectively prevent recovery of spirits therefrom.

(68A Stat. 651; 26 U. S. C. 5282)

COMPOUNDING

§ 235.484 *Compounding with coloring or flavoring material.* The compounding of spirits or wines through the mixing of any coloring, flavoring, or other material (including carbon dioxide) with either distilled spirits or wines for sale as such, or as other product, such as a cordial or liqueur, constitutes rectification and necessitates payment of the rectifying tax thereon, except where cordials or liqueurs subject to tax under section 5022, I. R. C., as provided in Subpart Y, of this part, are manufactured. Compounding must be done in the rectifying room in the processing tanks or other suitable vessels appropriately marked (see Subpart I). Compounding must likewise be done in accordance with the formula and process submitted by the rectifier, as provided in Subpart R of this part.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.485 *Compounding with fruits, berries, etc.* The steeping or soaking of fruits, such as apricots, peaches, etc., or of berries, such as sloe berries, juniper berries, etc., or of aromatic herbs, roots, seeds, etc., in spirits or wines by rectifiers constitutes rectification and necessitates payment of the rectifying tax on the finished product.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.486 *Compounding with sugar, caramel, essences, etc.* The addition of sugar, dextrose, rock candy, or any sweetening materials, or of essences, extracts, or other flavoring materials, or of any coloring material, such as caramel, to spirits or wines by a rectifier, regardless of quantity, constitutes rectification and necessitates payment of the rectifying tax on the finished product, unless such product is a liqueur or cordial subject to tax under section 5022, I. R. C.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.487 *Mixing spirits and wine.* The mixing or compounding of distilled spirits and wine with each other by a rectifier constitutes rectification and necessitates payment of the rectifying tax. Where the rectified product is classed as wine and the taxable grade of the wine

is increased by the addition of the distilled spirits thereto, additional tax due on the wine according to its new grade must be paid as well as the rectification tax, as provided in Subpart Y of this part. Likewise where the volume of the wine is increased, wine tax must be paid on the additional gallonage, as provided in § 235.488.

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.488 *Increasing volume of wine.* Where wine is treated or compounded at a rectifying plant by the addition of sugar or a sugar solution or other material thereto, and the volume of the wine is increased by such treatment, wine tax must be paid on the additional gallonage, plus the rectification tax on the entire quantity. If, however, the wine is so treated as to convert it into a distinct product other than wine and it is not sold as wine, no additional wine tax will be due.

(68A Stat. 609; 26 U. S. C. 5041)

§ 235.489 *Artificial carbonation.* The artificial carbonating of spirits or wines constitutes rectification and necessitates payment of the rectifying tax. Where spirits or wines are subjected to some other process of rectification and are immediately thereafter carbonated and bottled, only one rectification tax will be incurred for the entire process. If the carbonization is included in the formula and process submitted by the rectifier, but if the spirits or wines are subjected to a specified rectifying process and are later carbonated, such will necessitate the payment of the rectifying tax twice on the spirits or wines involved.

(68A Stat. 616; 26 U. S. C. 5082)

§ 235.490 *Manufacture of distinct wine products.* Where a distinct wine product is manufactured, such as vermouth, champagne or sparkling wine, or artificially carbonated wine, which is subject to tax under section 5041, I. R. C., such tax must be paid in addition to the rectification tax.

§ 235.491 *Manufacture of intermediate products.* Where products such as vermouth, blended whisky, compounded gin, etc., are compounded under an approved formula and process as an intermediate step in the manufacture of a specified finished product, such as a cocktail, sloe gin, etc., and such intermediate products are not made as finished products for sale but are retained in the processing room for use in further compounding under a specified process, tax will attach to the finished product only and not to the intermediate product. Where it is desired to manufacture an intermediate product for use in manufacturing a finished product with payment of tax on the finished product only, a separate formula and process must be filed for the intermediate product and for the finished product, and the intermediate product must be designated as such on the formula and process.

§ 235.492 *Use of vermouth or other wines in manufacturing.* Where vermouth or other wines, containing in excess of 14 percent alcohol by volume, are mixed with distilled spirits or other

liquors in the manufacture of cordials, liqueurs, or similar compounds (other than cocktails), and the quantity of such vermouth or other wines exceeds 2½ percent of the volume of the manufactured product, and such product is not to be sold as wine, the tax imposed by section 5022, I. R. C., shall be paid in lieu of the rectification tax prescribed by section 5021, I. R. C. Where the quantity of vermouth or other wines so mixed does not exceed 2½ percent of the volume of the manufactured product, or where the wines so mixed do not contain in excess of 14 percent alcohol by volume, the rectification tax imposed by section 5021, I. R. C., shall be paid, and the tax prescribed by section 5022, I. R. C., shall not attach. The rectification tax imposed by section 5021, I. R. C., is described in § 235.540. The tax imposed by section 5022, I. R. C., is described in § 235.551.

(68A Stat. 606; 26 U. S. C. 5021, 5022)

§ 235.493 *New formulas required.* The manufacture of cordials, liqueurs, and similar compounds, which contain fortified wine, or vermouth or other wines containing in excess of 14 percent alcohol by volume, shall be discontinued on and after January 1, 1955, unless new formulas on Forms 27-B Supplemental are approved for such products, and the tax rates imposed by section 5021 or 5022, I. R. C., as the case may be, are indicated on the approved forms. Formulas shall be prepared and submitted as provided in Subpart R of this part.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.494 *Completion of process.* Upon completion of the process of compounding or manufacturing where another product, such as a cordial or liqueur is made, the compounded liquor or product produced thereby must be taxpaid, and be removed to the finished products room or be transferred by pipeline, tank car, or tank truck to a taxpaid bottling house or rectifying plant. The proof-gallon content of such compounded liquors or products must be determined as set forth in Subpart Z of this part.

MANUFACTURE OF SPARKLING WINES

§ 235.495 *Statement of process.* Champagne and other sparkling wines may be manufactured by a rectifier from taxpaid domestic or imported wines. A statement of the exact process to be followed in manufacturing sparkling wines must be filed by the rectifier on Form 27-B Supplemental, as provided in Subpart R of this part, and application made for extension of time in which to complete the process of manufacture, as provided in Subpart X of this part. In view of the nature of the manufacturing process, a statement as to the approximate period of manufacture will be acceptable.

§ 235.496 *Dumping of still wine.* When the rectifier desires to dump still wine for bottling for champagne manufacture or for the manufacture of a sparkling wine of the champagne type by fermentation in bulk, he will give notice on Form 122, and the same procedure will be followed as in the case of

the dumping of wines for rectification by other processes.

§ 235.497 *Storage during manufacture.* The bottled wine will be kept in the champagne room during the process of manufacture into champagne or other sparkling wines, except that where the rectifying room is used exclusively for the manufacture of such wines, the bottled wine may be retained in the rectifying room during the manufacturing process.

§ 235.498 *Records and reports.* Where the sparkling wine is to be manufactured by secondary fermentation within the bottle, the rectifier will maintain a record of the process of such manufacture on Form 2057, showing the date, quantity, and alcoholic content of the still wines used, and the number of gallons bottled, in accordance with the instructions printed on the form or issued in respect thereto. The rectifier will also make appropriate entries on Form 45 of the manufacture and disposition of all sparkling wines produced.

(68A Stat. 652; 26 U. S. C. 5285)

§ 235.499 *Completion of process.* Upon completion of the process of manufacture, Form 237, properly modified, will be promptly prepared in triplicate, the rectifying and sparkling wine taxes will be paid and the sparkling wine will be removed to the finished products room, as provided in Subpart Z of this part.

FILTERING

§ 235.500 *Taxable filtration.* Any filtering of distilled spirits or wines by rectifiers which purifies or refines and changes the composition or character of the spirits or wines constitutes rectification and necessitates payment of the rectifying tax of 30 cents per proof gallon. Such filtering must be done within the rectifying room and upon completion thereof the spirits or wines must be immediately (a) drawn into packages, gauged, taxpaid, stamped, and removed to the finished products room; or (b) transferred to a bottling tank, gauged, taxpaid, and (1) bottled and removed to the finished products room, or (2) conveyed by pipeline to a contiguous taxpaid bottling house or rectifying plant or (3) conveyed by pipeline to tank cars or tank trucks for shipment to a taxpaid bottling house or to another rectifying plant.

(68A Stat. 606, 616, 651; 26 U. S. C. 5021, 5062, 5282)

§ 235.501 *Filtering out solid matter.* Filtering which consists of merely removing foreign substances, such as particles of char, wood, or other extraneous solid matter which have got into the spirits or wines since manufacture, and which does not change the original character of the spirits or wines through removal of any congener substance, or change the composition, does not constitute rectification.

§ 235.502 *Filtering out cloudiness.* The filtering of whisky, brandy, or rum for the removal of cloudiness due to the presence of finely pulverized or agglutinated charcoal or other extraneous mat-

ter does not constitute rectification, provided there is no change in the original composition or character of the spirits. However, the filtering out of congeneric substances, thereby changing the composition and character of the spirits, will constitute rectification.

(68A Stat. 606, 616, 651; 26 U. S. C. 5021, 5082, 5282)

§ 235.503 *Soluble matter held in solution.* The use of filters and filter-aids which will remove, change, or modify soluble matter held in solution in the spirits, thereby changing the composition or character of the spirits, will subject the product to the rectifying tax. Whether filtering changes the composition of the spirits by removal or modification of matter in solution is a question of fact determinable by chemical analysis of the spirits before and after filtration. Where there is doubt whether the filtering changes the composition of the spirits, samples should be taken of the spirits both before and after filtering and submitted to the regional chemist for examination.

(68A Stat. 606, 616, 651; 26 U. S. C. 5021, 5082, 5282)

§ 235.504 *Filtering as part of rectifying process.* Spirits may be purified or refined by filtering one or more times during the rectifying process without incurring more than one rectification tax, provided such filtering is done pursuant to an approved formula and process and the operation is continuous and unbroken. If the spirits or wines are subjected to a rectifying process and are then set aside, removed to the finished products room, transferred to a taxpaid bottling house or to another rectifying plant, etc., and later filtered in such a manner as to constitute rectification, such filtering will necessitate the payment of another rectifying tax on the spirits or wines involved. Likewise, when the process of rectification has been completed any further filtering which purifies or refines the spirits or wines through the removal of any congenics, or which changes the original composition of the spirits or wines, will necessitate payment of another rectifying tax.

(68A Stat. 606, 616, 651; 26 U. S. C. 5021, 5082, 5282)

§ 235.505 *Clarification of wine.* The clarification of wine on the premises of a rectifier by filtering, sedimentation, or the addition of isinglass or similar clarifying substance, which does not change the composition of the wine is permissible, and such manipulation only does not involve the rectifier in any additional tax.

(68A Stat. 607, 665; 26 U. S. C. 5025, 5363)

OTHER PROCESSES

§ 235.506 *Must conform to regulations.* Other rectifying processes must be conducted in conformity with this part. Where there is any doubt as to any rectifying process, or to the incurrence of the 30-cent rectification tax, or

the tax on liqueurs, cordials, etc., the matter should be submitted to the assistant regional commissioner.

SUBPART X—TIME FOR COMPLETION OF RECTIFICATION

§ 235.525 *General limitation.* The rectifying process must be completed within 10 days from the date of the dumping of the spirits for rectification, unless a longer period is authorized as provided by this subpart.

§ 235.526 *Application required for extension.* Where the rectifier desires to employ a process of rectification which will extend over more than 10 days, thus necessitating the holding of the spirits in the rectifying room for such longer period, application, in quadruplicate, for approval of such extended process must be incorporated in the Form 27-B Supplemental, and filed with the assistant regional commissioner as provided in § 235.345. The rectifier must set forth fully on such form, following the statement of process, the reason why the period of time specified for completion of the process is necessary.

§ 235.527 *Inquiry by assistant regional commissioner.* Upon receipt of a Form 27-B Supplemental requesting approval of a process requiring more than 10 days for completion, the assistant regional commissioner will make such inquiry as he may deem proper to determine the necessity for the extended period, and whether approval thereof will jeopardize the revenue. He will then forward all copies of the Form 27-B Supplemental to the Director, Alcohol and Tobacco Tax Division, along with his findings and recommendation. The Form 27-B Supplemental will be disposed of in the manner prescribed by § 235.350.

§ 235.528 *Processes which may require extension.* Processes involving the steeping or macerating of fruits or herbs in spirits for flavoring may require more than 10 days for completion. The retention in the rectifying room of rectified spirits, such as blended whiskies, cordials, etc., for a reasonable period to permit "settling" or "marrying" may be authorized. Tax-exempt products, such as distilled gin, or blended 4-year-old straight whiskies, or blended 2-year-old pure fruit brandies, so held must be kept in closed tanks under Government lock.

SUBPART Y—COMMODITY TAXES ON RECTIFIED SPIRITS AND PRODUCTS

§ 235.540 *Rectification tax.* Section 5021, I. R. C., imposes a tax of 30 cents on each proof gallon, and a proportionate tax at a like rate on all fractional parts of a proof gallon, on all distilled spirits and wines rectified, purified, or refined, in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier. (See Subpart C of this part.)

(68A Stat. 606, 616; 26 U. S. C. 5021, 5082)

§ 235.541 *Exemption from rectification tax.* The tax of 30 cents per proof gallon does not attach to gin produced by the redistillation of a pure spirit over

juniper berries and other aromatics; to vodka produced from pure spirits in accordance with the procedure described in § 235.450; to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to recognized commercial standards; to the mixing together of wines of the same kind and taxable grade to facilitate handling, or for purposes of preservation, filtration, or clarification; to cordials or liqueurs on which a tax is imposed by section 5022, I. R. C.; nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period of not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water, and if not reduced below 80 proof nor to blends made exclusively of two or more pure fruit brandies distilled from the same kind of fruit, aged in wood for a period not less than two years and without the addition of coloring or flavoring matter or any other substance than pure water, and if not reduced below 80 proof: *Provided*, That such blended whiskies and blended fruit brandies are compounded under the immediate supervision of an internal revenue officer in such tanks and under such conditions and supervision as provided in Subpart W of this part.

(68A Stat. 606, 607, 665, 672; 26 U. S. C. 5022, 5025, 5363, 5391)

§ 235.542 *Gin.* Gin produced by a rectifier is exempt from the rectification tax of 30 cents per proof gallon only if produced by the redistillation of a pure spirit over juniper berries and other aromatics. If gin is otherwise produced or compounded, a rectification tax of 30 cents per proof gallon must be paid thereon. (See Subpart W of this part.)

(68A Stat. 606, 607; 26 U. S. C. 5021, 5025)

§ 235.543 *Vodka.* Vodka produced by a rectifier is exempt from the rectification tax of 30 cents per proof gallon only if produced from pure spirits in accordance with the procedure described in § 235.450. If vodka is otherwise produced or compounded, the rectification tax of 30 cents per proof gallon must be paid thereon. (See Subpart W of this part.)

(68A Stat. 606, 607; 26 U. S. C. 5021, 5025)

§ 235.544 *Wine tax.* Section 5041, I. R. C., imposes a tax on all wines, including imitation, substandard or artificial wine, and compounds sold as wine, which contain 24 percent or less of alcohol by volume, as follows:

(a) On still wines containing not more than 14 percent of alcohol by volume, 17 cents per wine gallon, except that on and after April 1, 1955, the rate shall be 15 cents per wine gallon;

(b) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, 67 cents per wine gallon, except that on and after April 1, 1955, the rate shall be 60 cents per wine gallon;

(c) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, \$2.25 per wine gallon, except that on and after

April 1, 1955, the rate shall be \$2.00 per wine gallon;

(d) On champagne and other sparkling wines, \$3.40 per wine gallon, except that on and after April 1, 1955, the rate shall be \$3.00 per wine gallon;

(e) On artificially carbonated wines, \$2.40 per wine gallon, except that on and after April 1, 1955, the rate shall be \$2.00 per wine gallon.

All wines which contain more than 24 percent of alcohol by volume are classed as distilled spirits and taxed accordingly.

§ 235.545 *Vermouth*. Vermouth made at a rectifying plant is subject to the 30-cent rectification tax prescribed by section 5021, I. R. C., and in addition thereto is subject to the wine tax prescribed by section 5041, I. R. C.

§ 235.546 *Carbonated and sparkling wines*. The carbonating of taxpaid wines, either by secondary fermentation of the wine within the bottle or container or by charging the wine artificially with carbon dioxide, must be done at a rectifying plant. The carbonated wine is subject to the rectification tax of 30 cents per proof gallon, and, in addition thereto, the tax imposed under section 5041 I. R. C., upon sparkling wine, or artificially carbonated wine, as the case may be, must be paid.

(68A Stat. 609; 26 U. S. C. 5041)

§ 235.547 *Blended wines*. Any blending of taxpaid wines by rectifiers, except the blending of domestic taxpaid wines for the sole purpose of perfecting such wines according to recognized commercial standards, subjects the resultant product to the 30-cent rectification tax. Where the taxable class of wine is increased by blending wines with each other, additional wine tax due on the blended wines must be paid, regardless of whether or not the 30-cent rectification tax is incurred by such blending. This additional wine tax represents the difference between the wine tax due on the blended wine under its new classification and the tax previously paid on the wines used for such blending.

(68A Stat. 608, 609; 26 U. S. C. 5021, 5041)

§ 235.548 *Compounded wines*. Except as provided in § 235.551, any rectifying, mixing, or compounding of taxpaid wine with taxpaid distilled spirits subjects the resultant product to the 30-cent rectification tax; and where the taxable class of wine is increased by the addition of distilled spirits thereto, additional tax due on the wine under its new classification must be paid as well as the rectification tax. (See Subpart W of this part.)

(68A Stat. 608, 609; 26 U. S. C. 5021, 5041)

§ 235.549 *Increase in volume of wine*. Where the volume of wine is increased by the addition of sugar or a sugar solution or other material thereto, wine tax must be paid on the additional gallonage, plus the rectification tax on the entire quantity. (See Subpart W of this part.)

(68A Stat. 608, 609; 26 U. S. C. 5021, 5041)

§ 235.550 *Distinct products*. Where the rectifying, mixing, compounding, or

blending of wine results in the manufacture of a distinct product, such as vermouth or sparkling wine, the tax imposed upon such product must, as provided in §§ 235.545 and 235.546 be paid in addition to the rectification tax. (See Subpart W of this part.)

(68A Stat. 608, 609; 26 U. S. C. 5021, 5041)

§ 235.551 *Liqueurs, cordials, etc., taxable under section 5022, I. R. C.* On all liqueurs, cordials, or similar compounds produced in the United States and not sold as wine, which contain more than 2½ percent by volume of wine of an alcoholic content in excess of 14 percent by volume (other than bottled cocktails), there shall be paid, in lieu of the 30-cent rectification tax imposed by section 5021, I. R. C., a tax at the rate of \$1.92 per wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon until April 1, 1955, and on and after April 1, 1955, at the rate of \$1.60 per wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon. By "liqueurs, cordials, or similar compounds" is meant those products that contain not less than 2½ percent by weight of sweetening material and possess the taste, aroma, and characteristics generally attributed to liqueurs and cordials.

(68A Stat. 608; 26 U. S. C. 5022)

§ 235.552 *Liqueurs, cordials, etc., taxable under section 5021, I. R. C.* On all liqueurs, cordials, and similar compounds which are produced from distilled spirits, or from distilled spirits and wines, which do not come within the classification of liqueurs, cordials, etc., taxable under section 5022, I. R. C., as set forth in § 235.551, there shall be paid the rectification tax of 30 cents per proof gallon imposed by section 5021, I. R. C.

(68A Stat. 608; 26 U. S. C. 5021)

SUBPART Z—GAUGE, RETURN, AND TAXPAYMENT OF RECTIFIED SPIRITS

GAUGE OF RECTIFIED SPIRITS

§ 235.565 *Transfer to packages or bottling tank*. Rectified spirits will, upon completion of the process of rectification, be transferred to packages of a capacity of more than 1 wine gallon and not exceeding 130 proof gallons, or to a bottling tank, and gauged therein, except as provided in §§ 235.121, 235.125, 235.575 and 235.620.

§ 235.566 *Adjustment of proof*. The proof of rectified spirits shall be adjusted to a whole degree of proof in accordance with the provisions of the Gauging Manual (Part 186 of this chapter), preparatory to filling barrels or bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.4, the proof of the spirits shall be adjusted to such tenths of a degree of proof. If the proof is so adjusted to tenths, the fractional degree of proof shall be used in determining the taxable gallons for payment of the rectification tax, in accordance with the Gauging Manual. The storekeeper-gauger shall

verify the proof by use of a standard hydrometer in each instance where the rectified product contains not more than 0.6 gram of solids per 100 milliliters (as reported by the rectifier). Where an obscuration correction factor has been determined by the rectifier, as provided in § 235.570, such factor will be added to the apparent proof as determined by use of a standard hydrometer. The proof of rectified products containing more than 0.6 gram of solids per 100 milliliters will be verified by the Government chemist through the submission from time to time of samples to him by the storekeeper-gauger as provided by § 235.772.

§ 235.567 *Filling of packages*. When filling packages of rectified spirits, the rectifier will determine the weight (tare) of the empty package immediately preceding the filling of the same. When the package has been filled, the gross weight will be ascertained and the net weight determined by subtracting the tare from the gross weight. The rectifier will mark such data on the packages in accordance with § 235.787. All mechanical labor pertaining to the weighing and marking of packages shall be performed by the rectifier. The storekeeper-gauger will secure samples from representative packages from time to time for submission to the Government chemist for analysis.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.568 *Preparation of statement of composition*. Where rectified spirits are to be removed to a taxpaid bottling house or to another rectifying plant for bottling, or to another rectifying plant for additional rectification, the rectifier shall prepare a statement of composition identifying the spirits and providing such information as will, in conjunction with the information shown on the packages, or on Form 237 covering transfer, permit determination of the proper additional tax if further rectification is involved, or permit verification of the label proposed to be used in bottling. The statement must include all pertinent information which is mandatory on the label for the particular product, for example, the presence or absence of flavoring material, artificial coloring, treatment with oak chips, quick-aging, etc. Such statement shall be signed by the rectifier and forwarded to the purchaser of the spirits for delivery to the bottler or to the proprietor of the premises where the spirits are to be bottled.

§ 235.569 *Determining proof of unsweetened spirits*. The proof of distilled spirits and rectified spirits to which saccharine or other solid matter has not been added will be determined by the use of a standard hydrometer set provided by the rectifier in accordance with Subpart Q of this part. In connection with the use of such instruments, rectifiers must provide themselves with the official Gauging Manual (Part 186 of this chapter) and follow closely instructions therein relative to the gauging of spirits.

(68A Stat. 651; 26 U. S. C. 5283)

§ 235.570 *Determining proof of sweetened spirits, wines, etc.* The alcoholic

content of blended whiskies containing more than 0.6 gram or 600 milligrams of solids per 100 milliliters derived from blending materials such as sherry wine, prune juice, caramel, glycerine, etc., and of wines, cordials, liqueurs, and other rectified products containing saccharine or other solid matter will be determined by the use of an approved ebulliometer or a small laboratory still provided by the rectifier in accordance with Subpart Q of this part. When using such instruments rectifiers must follow closely the instructions furnished therewith in order that accurate determinations may be made. Instructions relative to the use of small laboratory stills (or wine sets) and the following ebulliometers: Arnaldo-Sala (with shield), Braun, Juerst, Lefco, L'Ebulliometer Levesque (with shield), Malligand (with shield), Salleron-Dujardin, "TAG" (with shield), and E. B. Torino (with shield), are also set forth in part 240 of this chapter. The alcohol content of blended spirits containing not more than 0.6 gram or 600 milligrams of solids per 100 milliliters derived from blending materials will be determined by the use of a standard hydrometer or a small still. If determined by a standard hydrometer an obscuration correction factor may be added to the apparent proof in order to obtain the true proof of the blended spirits. Experience has shown that 0.1 gram or 100 milligrams of solids per 100 milliliters will obscure the true proof 0.4 of 1° of proof. For example, if a blended whisky contains 0.25 gram or 250 milligrams of solids per 100 milliliters and the apparent proof corrected to 60° Fahrenheit is found to be 89° proof by a standard hydrometer, a correction factor of 1° of proof (2.5 times 0.4) due to the solids may be added to the apparent proof, hence the true proof would be 90°. The solids in blended spirits due to blending materials will be determined by evaporating 25 milliliters of the blended spirits in a weighed dish on a steam bath and then heating for 30 minutes at the temperature of boiling water in a drying oven. The solids thus determined, multiplied by 4, will give the solids in 100 milliliters of blended spirits. The correction factor to be used then will be determined on the basis that every 100 milligrams of solids will obscure the proof 0.4 of 1° of proof.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.571 *Determining contents by weight.* Rectified spirits containing not more than 0.6 gram or 600 milligrams of saccharine or other solid matter per 100 milliliters which are transferred to portable packages or to a bottling tank mounted on scales may be gauged by weight in accordance with the Gauging Manual (Part 186 of this chapter). To this end accurate scales must be provided. Storekeeper-gaugers will frequently test, by means of the test weights provided in accordance with § 235.122, the accuracy of the scales used for weighing packages. Scales used for weighing spirits in lots of not over 500 gallons in bottling tanks will be tested from time to time under the supervision of the storekeeper-gauger by means of the test weights provided in accordance with

§ 235.122. Such scales will be tested by placing the prescribed test weights upon the scales and checking the weight registered on the beam of the scales. The test weights will then be removed without disturbing the beam and the bottling tank filled with spirits or water to the same weight, whereupon the test weights will again be placed upon the scales, the spirits or water being retained in the tank, and the weight registered on the beam checked. This operation will then be continued until the scales have been checked in 500-pound notches at all weights for which the scales are used. Rectifiers will have scales used for weighing spirits in larger lots tested and their accuracy certified by State, county, or city departments of weights and measures, or responsible scale companies, at intervals of not more than six months. The storekeeper-gauger will not permit the use of any scales not so tested or which upon testing are found to be inaccurate.

§ 235.572 *Determining contents by measure.* Rectified spirits transferred to a bottling tank not mounted on scales, and spirits, wines, cordials, liqueurs, and other rectified products containing saccharine and other solid matter will be gauged by measure to determine the wine-gallon content, corrected by volume in accordance with the provisions of the Gauging Manual (Part 186 of this chapter); the proof-gallon content will then be determined by multiplying the wine-gallon content by the proof (pointed off in two decimal places) of the spirits. If the spirits, wines, cordials, liqueurs, and other rectified products containing saccharine or other solid matter are transferred to packages, the capacity of each package must be ascertained before the liquors are placed therein, or the quantity to be placed in each package must first be ascertained by actual measure in another vessel provided for that purpose: *Provided*, That the quantity in wine gallons of any liquor placed in packages may be determined by weight if the specific gravity of the liquor is ascertained and used in calculating the volume.

§ 235.573 *Accuracy required.* The proof of spirits, wines, or other liquors transferred to packages or bottling tanks at rectifying plants, and the wine-gallon and proof-gallon contents of the containers must be accurately determined by the rectifier. Where the actual proof of the contents of a container is found upon test to differ from the proof marked on the container, or where a package is found to contain a larger number of proof or wine gallons than is shown by the markings thereon, the container or package is liable to detention or seizure and forfeiture. When rectified spirits and products are gauged for taxpayment, the storekeeper-gauger will verify the proof or alcoholic content, as provided in § 235.566, and the quantity on which the tax is to be paid.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.574 *Preparation of Form 237.* A separate Form 237 will be prepared by the rectifier covering the gauge of each lot of packages or each tank filled with rectified spirits or products as provided in § 235.565. All of the informa-

tion called for on Form 237, as indicated by the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part, will be given. Where spirits are to be transferred by tank car or tank truck to a taxpaid bottling house or to another rectifying plant the rectifier will make written request in Part 1 of the Form 237 covering such transfer for the issuance of a wholesale liquor dealer's stamp to be affixed to the tank car or tank truck. Each Form 237 will be given a serial number beginning with 1 for the 1st day of January of each year and running consecutively thereafter to December 31.

RETURN OF SPECIAL PRODUCTS

§ 235.575 *Exemption from processing or bottling requirements.* Where by reason of unusual processes employed in the rectification and bottling of special products, such as sparkling wines, rock and rye, gin ricky, etc., it is impracticable to manufacture the products in processing tanks equipped with glass gauges or other measuring devices, or to bottle the same from bottling tanks so equipped, the assistant regional commissioner may exempt the rectifier from such processing and bottling requirements.

§ 235.576 *Application.* Rectifiers desiring to manufacture or bottle such special products under exemption from the regular processing or bottling requirements must file application for such exemption, in duplicate, with the assistant regional commissioner, setting forth in detail with respect to each such product the process of manufacture or bottling to be employed, and the necessity therefor.

§ 235.577 *Action on application.* Upon receipt of the application, the assistant regional commissioner will make appropriate inquiry and indicate his approval or disapproval on all copies of the application, and will forward one copy to the applicant.

§ 235.578 *Form 237, modified.* In any case in which such exemption is granted and it is impracticable to gauge the spirits and pay the tax prior to bottling in the usual manner, the tax shall be computed and paid on the contents of the bottles. When so bottled prior to taxpayment, Form 237, modified to fit the circumstances, will be prepared for each lot of such bottled special products upon completion of the bottling, except that where manufacture is completed after bottling, as in the case of champagne, Form 237 will be prepared upon completion of manufacture.

PAYMENT OF RECTIFICATION TAX

§ 235.579 *Form 237.* Where rectified spirits are subject to the rectification tax of 30 cents per proof gallon and are to be taxpaid in packages, Form 237 will be prepared in triplicate. Where rectified spirits are subject to the rectification tax of 30 cents per proof gallon and are to be taxpaid in a tank, Form 237 will be prepared in duplicate, except that one extra copy will be made where the transfer of spirits by pipeline to a contiguous taxpaid bottling house or rectifying plant is authorized, as provided in Subpart BB

of this part, and two extra copies will be made where the transfer of spirits by tank truck or tank car is authorized, as provided in Subpart CC of this part. Where rectified spirits are to be bottled on the premises of the taxpayer a copy of the label which is to be affixed to the bottles of such spirits shall be attached to each copy of Form 237. In computing the rectification tax, all fractional parts of a proof less than five-hundredths shall be dropped, and fractional parts of five-hundredths or more shall increase the fractional part to the next tenth.

§ 235.580 Inspection and approval by officer. All copies of Form 237 will be submitted by the rectifier to the storekeeper-gauger assigned to the rectifying plant, who will then inspect the rectified spirits. After inspection of the rectified spirits and ascertaining from the approved formula the rate of tax applicable, the officer will note his approval on each copy of the form and the tax rate and the amount of tax to which the spirits are subject based on the details as set forth by the rectifier in Part 2. He will then return all copies of the Form 237 to the rectifier.

§ 235.581 Remittance of tax for packages. Except as provided in § 235.584, for the taxpayment of spirits and wines in packages filled especially for export with benefit of drawback, if the rectified spirits are to be taxpaid in packages, the rectifier shall, upon receipt of Form 237, duly approved, forward all copies to the district director with proper remittance for the tax due.

TAXABLE PRODUCTS IN PACKAGES

§ 235.582 Spirits. If Form 237 covers spirits (not including wines) in packages (barrels, kegs, or other containers holding more than 1 wine gallon and not exceeding 130 proof gallons each), the district director will issue a class B rectified spirits stamp, with proper coupons attached, for each package and will enter the serial numbers of the stamps in the proper column on all copies of Form 237, opposite the package for which the stamp is issued. The district director will retain one copy of Form 237 as his authority for issuing the stamps, and will return the other two copies to the rectifier with the stamps. The rectifier will submit the stamps to the storekeeper-gauger who will verify that such stamps were issued in the proper amount. The rectifier will immediately affix the stamps to the packages and cancel the same and mark the packages, as required by Subparts FF and HH of this part. When the packages have been properly stamped and marked, the rectifier will immediately remove them to the finished products room, and mark, date, and sign each copy of Form 237. The rectifier will immediately forward the original of the form to the assistant regional commissioner and will retain the copy on file at the plant available for inspection by internal revenue officers.

(66A Stat. 651; 26 U. S. C. 5282)

§ 235.583 Wines. If Form 237 covers wines, the district director will execute his certificate of taxpayment on each copy of Form 237, and return two copies

to the rectifier, who will immediately stencil the words "Rectification Tax Paid" on each package, mark the packages as required by Subpart HH of this part, and remove them to the finished products room. Form 237 will be completed and disposed of in accordance with § 235.582.

§ 235.584 Spirits packaged especially for export with benefit of drawback. If Form 237 covers spirits, wines, cordials, or liqueurs drawn into barrels, casks, drums, or other approved containers containing not less than 5 wine gallons, especially for export with benefit of drawback, the rectifier shall, upon receipt of Form 237, duly approved, cancel the necessary stamps in the exact amount of the tax due in the manner provided by § 235.718, attach the stamps to Form 237, and return all copies to the storekeeper-gauger. The storekeeper-gauger shall complete the cancellation of the stamps as provided by § 235.718, execute the certificate on Form 237 evidencing the receipt and cancellation of stamps for the amount of taxes due, and, except in the case of wines, prepare a wholesale liquor dealer's stamp for each package as provided in Part 252 of this title. He shall then return all copies of the Form 237 with the wholesale liquor dealer's stamps, if any, and the canceled rectified spirits stamps, to the rectifier. The rectifier shall stencil the words "Rectification Tax Paid" on each package, affix and cancel the wholesale liquor dealer's stamps, if any, in the manner prescribed by §§ 235.729 through 235.732. He will then remove the packages to the export storage room, attach the canceled stamps to the original of the Form 237 by means of staple, eyelet or similar device and immediately forward the original and the additional copy of the Form 237 to the assistant regional commissioner.

TAXABLE PRODUCTS TO BE BOTTLED

§ 235.585 Taxpayment. If Form 237 covers spirits in a bottling tank to be bottled, or wines, cordials, or liqueurs to be bottled in the wine bottling room from the processing receptacle in which compounded, the rectifier will, upon receipt of Form 237, duly approved, cancel the necessary stamps in the exact amount of the tax due in the manner provided by § 235.718. He will then attach the stamps to Form 237 and return all copies to the storekeeper-gauger, who will complete the cancellation of the stamps as provided by § 235.718 and will execute the certificate on Form 237 evidencing the receipt and cancellation of stamps for the amount of taxes due. He will then return all copies of Form 237 and the canceled stamps to the rectifier, who will attach the canceled stamps to the original of Form 237 by means of a staple, eyelet, or similar device, and attach one copy of the form to the board provided therefor on the bottling tank, or to the door of the wine bottling room, as the case may be. The spirits will be bottled in accordance with the procedure prescribed in Subpart AA of this part.

§ 235.586 Disposition of Form 237 and stamps. Upon the completion of

the bottling, the rectifier will execute the certificate of cases filled on all copies of Form 237, sign each copy and in the case of rectified products taxable under section 5022, I. R. C., and of products bottled under the provisions of § 235.578 submit each copy to the storekeeper-gauger, who will, after proper verification, sign and date the verification in the space provided therefor. In such instances the storekeeper-gauger will immediately return both copies of Form 237 to the rectifier. In all instances the bottling tank or wine bottling room copy of the form will be retained in the rectifying plant available for inspection by internal revenue officers. The rectifier will immediately forward the completed original and stamps to the assistant regional commissioner.

TAXABLE SPIRITS TO BE TRANSFERRED BY PIPELINE TO CONTIGUOUS TAXPAID BOTTLING HOUSE OR RECTIFYING PLANT

§ 235.587 Certificate of taxpayment. If Form 237 covers spirits to be transferred by pipeline to a contiguous taxpaid bottling house or rectifying plant, the procedure for taxpaying the spirits will be the same as where the spirits are to be bottled from a bottling tank. As evidence that the proper tax on the spirits has been paid, the proprietor of the receiving plant will attach the extra copy of the form specified by § 235.579 to the storage tank, or to Form 230 on the bottling tank if the spirits are deposited therein, or to Form 122 on the processing tank if the spirits are deposited in such a tank. The spirits will be transferred in accordance with the procedure prescribed in Subpart BB of this part.

§ 235.588 Disposition of Form 237. Upon completion of the transfer of rectified spirits to the taxpaid bottling house or rectifying plant, there shall be entered on all copies of Form 237 a statement that the spirits described on such form have been transferred by pipeline to bottling (storage, processing) tank No. ... in the contiguous taxpaid bottling house (rectifying plant) operated by ..., together with the date of such transfer. The rectifier will, prior to such transfer, furnish a copy of Form 237 to the storekeeper-gauger at the receiving taxpaid bottling house or rectifying plant, and will immediately forward the original copy of Form 237 with the canceled stamps to the assistant regional commissioner, and will retain his copy of the form in a permanent file as prescribed in § 235.833. The storekeeper-gauger at the receiving plant will deliver his copy of Form 237 to the proprietor of that plant after the spirits have been received, and the proprietor will attach the copy to storage tank or to Form 122 or 230, as provided in § 235.587.

TAXABLE SPIRITS TO BE TRANSFERRED BY TANK CAR OR TANK TRUCK TO TAXPAID BOTTLING HOUSE OR TO RECTIFYING PLANT

§ 235.589 Certificate of taxpayment. If Form 237 covers spirits to be transferred by tank car or tank truck to a taxpaid bottling house or to a rectifying plant, the procedure for taxpaying the

spirits will be the same as where the spirits are to be bottled from a bottling tank. As evidence that the proper tax on the spirits has been paid, the receiving plant will attach one of the extra copies of the form specified by § 235.579 to the storage tank, or to Form 230 on the bottling tank if the spirits are deposited therein, or to Form 122 on the processing tank if the spirits are deposited in such a tank. The spirits will be transferred in accordance with the procedure prescribed in Subpart CC of this part.

§ 235.590 *Disposition of Form 237.* The rectifier will enter on all copies of Form 237 a statement that the spirits described on such form have been deposited in tank car (tank truck) No. ---, for shipment to taxpaid bottling house (rectifying plant) No. ---, operated by ---, address ---, together with the date of such deposit. The rectifier will immediately forward one copy of Form 237 to the storekeeper-gauger at the receiving taxpaid bottling house or rectifying plant, forward the original Form 237 with cancelled stamps attached to the assistant regional commissioner of the region in which the shipping rectifier is located, forward one copy of Form 237 to the assistant regional commissioner of the region in which the receiving plant is located, and retain the remaining copy of the form in a permanent file as prescribed in § 235.833. The storekeeper-gauger at the receiving plant will deliver his copy of Form 237 to the proprietor of that plant after the spirits have been received, and the proprietor will attach the copy to storage tank or to the Form 122 or 230, as provided in § 235.589.

TAXABLE SPECIAL PRODUCTS

§ 235.591 *Certificate of taxpayment.* Where the assistant regional commissioner has exempted the rectifier from the usual processing and bottling requirements in connection with the manufacture of champagne or other sparkling wines, artificially carbonated wines, or other special products, as provided in § 235.575, and it is impracticable to gauge the spirits and pay the tax prior to bottling in the usual manner, the 30-cent rectification tax will be paid upon completion of the bottling or, if the bottling is only a step in manufacture, upon completion of the manufacture. The rectifier will prepare Form 237, in duplicate, modified to fit the circumstances, and the same procedure will be followed in paying the tax as that prescribed in the case of products to be bottled from bottling tanks. Upon receipt of Form 237 from the storekeeper-gauger with his certificate of taxpayment executed, and upon payment of the tax due (if any) under section 5041 I. R. C., as provided in § 235.600, the products will be removed to the finished products room.

§ 235.592 *Disposition of Form 237.* Upon removal of the product to the finished products room, the rectifier will enter on each copy of Form 237 a statement that the product described on the form has been taxpaid and removed to the finished products room. The rectifier will sign each copy of Form 237 and

submit same to the storekeeper-gauger, who will, after proper verification, sign and date the verification in the space provided therefor, and return both copies to the rectifier. The rectifier will immediately forward the original copy of Form 237 with the canceled stamps to the assistant regional commissioner and retain one copy on file at the plant, available for inspection by internal revenue officers.

PARTIALLY RECTIFIED, TAXABLE PRODUCTS

§ 235.593 *Determination of tax liability.* Where the rectifier desires to remove partially rectified, taxable products, the taxes due thereon must be paid prior to removal of the products from the rectifying room, in the same manner as completely rectified products are taxpaid. If the partially rectified products are such as are subject to tax under section 5022, I. R. C., in lieu of the 30-cent rectification tax, or are subject to wine tax under section 5041, I. R. C., in addition to the rectification tax, the rectifier must append to each copy of Form 237 a precise statement as to the extent to which the products have been rectified and as to their present character, in order that the taxes due thereon may be determined. Products subject to tax under section 5022 I. R. C., in lieu of the rectification tax will be so taxpaid, unless the process of manufacture has not been sufficiently completed to bring them within the classification of such articles, in which event the products will be subject to the rectification tax. If the products are such as to be subject to both the rectification tax and tax under section 5041, I. R. C., both such taxes must be paid, unless the process of manufacture has not been sufficiently completed to bring them within the classification of such articles, in which event they will be subject to the rectification tax only. The storekeeper-gauger will verify the extent of rectification and the present character of the partially rectified products and will forward the Forms 237 with his report to the assistant regional commissioner.

§ 235.594 *Stamping and marking packages.* Where partially rectified products, subject to the rectification tax, are transferred to packages for removal, the rectification tax due thereon will be paid pursuant to Form 237, and class B rectified spirits stamps will be issued for and affixed to the packages of spirits and the words "Rectification Tax Paid" will be stenciled on packages of wine, in accordance with the procedure prescribed in this subpart in the case of the taxpayment of completely rectified spirits and wines in packages. If the products are not subject to rectification tax, class A rectified spirits stamps will be issued for and affixed to the packages of spirits and the words "Rectification Tax Exempt" will be stenciled on packages of wine. If the products are subject to tax under either section 5022 or 5041, I. R. C., rectified spirits stamps will be cancelled and affixed to the packages. The packages will be marked as provided in subpart HH of this part, and if shipped to another rectifier for further rectification,

there will be securely affixed to the Government head of each package a label showing that the product is partially rectified, the formula under which the product was partially rectified, and the extent to which the product has been treated.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.595 *Transfer to another rectifier.* Where partially rectified, taxable products are transferred to another rectifying plant, after taxpayment in accordance with § 235.593, they will, upon receipt at the receiving plant, be placed in the receiving room of such plant and dumped for further rectification or for bottling, pursuant to Forms 122 or Forms 230, as the case may be. Where the products are subjected to any further rectifying treatment or process at the receiving plant, additional rectification tax must be paid thereon: *Provided*, That where the product manufactured by the additional rectifying process is subject to tax under section 5022, I. R. C., in lieu of the rectification tax, and the tax levied by such section was not paid on the product at the time of removal from the first rectifying plant, tax will be paid under such section in lieu of the rectification tax. If tax was paid on the products under section 5022, I. R. C., in lieu of the 30-cent rectification tax, at the time of partial rectification, and the products are subjected to further rectification at the receiving plant, the 30-cent rectification tax must be paid thereon.

§ 235.596 *Transfer to successor.* Where the rectifier desires to transfer partially rectified products to a successor at the same premises, the procedure prescribed in Subpart LL of this part will be followed.

PRODUCTS EXEMPT FROM RECTIFICATION TAX

§ 235.597 *Spirits and wines in packages.* Where the rectified spirits or products (not including wines) are not subject to the 30-cent rectification tax and are filled into packages, Form 237 will be prepared in triplicate and the same procedure will be followed as in the case of such spirits or products subject to the rectification tax, except that the officer approving the form will, if the spirits or products are exempt from tax, make the notation "No tax due" on each copy, the rectifier will send no remittance to the district director when submitting the approved forms to him, and the district director will issue no-value class A rectified spirits stamps for the packages. The same procedure will be applicable where the rectifier desires to remove tax-free blended wines in packages, except that Form 237 will be prepared in duplicate and in lieu of forwarding such form to the district director for the issuance of no-value class A stamps, the rectifier will stencil the words "Rectification Tax Exempt" on each package.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.598 *Approval of bottling tax-exempt products.* Where rectified spirits or products are not subject to the 30-cent rectification tax and are transferred

directly to a bottling tank for bottling or to the wine bottling room for bottling from the processing receptacle in which compounded, as provided in Subpart AA of this part, Form 237 will be prepared in duplicate, and the same procedure will be followed as in the case of bottling of spirits or products subject to the rectification tax, except that the storekeeper-gauger approving the form will, if the spirits or products are exempt from tax, make the notation "No tax due" on each copy, and none of the forms will be sent to the district director.

§ 235.599 *Approval of transfer of tax-exempt products by pipeline, or by tank car or tank truck.* Where rectified spirits or products are not subject to the 30-cent rectification tax and are transferred directly to a tank for loading into a tank car or tank truck, or for conveyance by pipeline to a contiguous taxpaid bottling house or rectifying plant, Form 237 will be prepared and the same procedure will be followed as in the case of the transfer of products subject to the rectification tax, except that the officer approving the form will, if the products are exempt from tax, make the notation "No tax due" on each copy, and none of the forms will be sent to the district director.

PAYMENT OF TAX UNDER SECTIONS 5022 OR 5041, I. R. C.

§ 235.600 *Time of payment.* Where rectified products subject to tax under section 5022, I. R. C., in lieu of the 30-cent rectification tax, or rectified products subject to wine tax under section 5041, I. R. C., in addition to the 30-cent rectification tax, are manufactured, the taxes due will be paid as provided in § 235.601. The 30-cent rectification tax, if due, will be paid in accordance with the procedure prescribed in §§ 235.579 through 235.584.

§ 235.601 *Payable by use of rectified spirits stamps.* Rectified spirits stamps will be used for the payment of taxes due under section 5022, I. R. C., and for the payment of any additional wine tax due by reason of a change in the taxable grade of wine, or by an increase in the volume of wine, as provided in this part. Such stamps will be canceled and attached to the original copy of Form 237 in the manner provided in § 235.585.

(68A Stat. 609, 614; 26 U. S. C. 5041, 5061)

SUBPART AA—BOTTLING OF RECTIFIED SPIRITS AND PRODUCTS

§ 235.615 *Bottling tank to be used.* Except as provided in §§ 235.125, 235.575 or 235.620, all rectified spirits or products to be bottled will be transferred to an approved bottling tank and an accurate gauge thereof made and reported on Form 237, as provided in subpart Z of this part. Rectified spirits and products may be bottled only after approval of Form 237 by the storekeeper-gauger assigned to the rectifying plant, and, if the spirits and products are subject to the rectification tax, or tax under section 5022 or 5041, I. R. C., upon payment of such tax.

§ 235.616 *Request to open inlet of bottling tank.* When a rectifier desires

to transfer spirits to a bottling tank, and the inlet thereof is locked, he will request the storekeeper-gauger to unlock the inlet of the tank to permit the transfer of the spirits thereto. Where a storekeeper-gauger is not assigned to continuous duty at the rectifying plant, and is not available, the rectifier will request the assistant regional commissioner to detail an officer to the duty.

§ 235.617 *Transfer of spirits to bottling tank.* At the time of unlocking the inlet of the bottling tank, the storekeeper-gauger will lock the outlet thereto, which must remain locked until the spirits have been transferred to the bottling tank, the inlet locked, the quantity of spirits in the bottling tank determined, Form 237 prepared and approved, and the rectification tax, or tax due under sections 5022 or 5041, I. R. C., if any, paid in accordance with the procedure prescribed in Subpart Z of this part.

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.618 *Release of spirits from tank.* Upon presentation by the rectifier of Form 237 in the case of spirits subject to rectification tax, and upon conformance with the taxpayment procedure prescribed by § 235.585, the storekeeper-gauger will unlock the outlet of the tank and permit the spirits to be bottled. If Form 237 covers spirits exempt from rectification tax, the storekeeper-gauger will, upon presentation of the form to him, determine if the form agrees with the contents of the bottling tank, and, if it so agrees, he will execute his certificate and the approval statement on the form, lock the inlet and unlock the outlet of the tank and allow the spirits to be bottled. The inlet of the bottling tank will remain locked, except as authorized in § 235.133, until all spirits within the tank have been bottled and the outlet has been locked. Form 237 will then be completed and disposed of as provided in § 235.586.

§ 235.619 *Filling tank in officer's absence.* Where a storekeeper-gauger, who is not assigned to continuous duty at the rectifying plant, is present thereat after the bottling of a lot of spirits has been completed, he will lock the outlet and unlock the inlet of the bottling tank. When such is done, the tank may be filled in the absence of the officer, Form 237 prepared, and, upon approval thereof, the tax due, if any, paid as prescribed in §§ 235.585 and 235.600.

§ 235.620 *Bottling from processing receptacle.* Where authorized by the assistant regional commissioner, wines and certain cordials and liqueurs that require bottling from the processing receptacle in which compounded may be so bottled in the wine bottling room, provided for the purpose in accordance with § 235.103. A rectifier desiring to so bottle such liquors must request approval of the assistant regional commissioner in writing, describing the liquors and showing the necessity for bottling same from the processing receptacle. The assistant regional commissioner will authorize the bottling from processing receptacles of only those wines, cor-

dials and liqueurs which it is impracticable to bottle from the prescribed bottling tank.

§ 235.621 *Transfer of products to wine bottling room.* Where the rectifier desires to bottle from processing receptacles wines, cordials, or liqueurs authorized to be so bottled, such receptacles will be placed in the wine bottling room, an accurate gauge made of the contents, Form 237 prepared and approved, and the tax thereon paid, as provided in Subpart Z of this part. The wine bottling room will be locked by the storekeeper-gauger with a Government lock pending payment of the rectification tax, if any, and bottling.

§ 235.622 *Release of products from wine bottling room.* Upon presentation by the rectifier of Form 237 in the case of products subject to the rectification tax, and upon conformance with the taxpayment procedure prescribed by § 235.585, the storekeeper-gauger will permit the products to be bottled. If the Form 237 covers products exempt from the rectification tax, and if the form agrees with the contents of the receptacles, the officer will execute his certificate and the approval statement on the form, and permit the products to be bottled. Form 237 will be completed and disposed of as provided in § 235.586.

§ 235.623 *Separate Form 237 for each tank.* A separate Form 237 must be prepared for each tank of spirits to be bottled, or to be transferred by pipeline to contiguous premises, and the same procedure will be followed for each tank.

§ 235.624 *Separate bottling of taxable and tax-exempt spirits.* Spirits subject to tax, and spirits not subject to tax, may not be bottled at the same time in the rectifying plant, unless two or more complete and separate bottling units are provided and the products are kept completely separate and apart.

§ 235.625 *Unauthorized bottling forbidden.* Spirits may not be bottled from any vessel, tank, or receptacle other than a designated and approved bottling tank, except as otherwise provided in §§ 235.575 and 235.620; nor may spirits be bottled without notice to the storekeeper-gauger assigned to the rectifying plant, or the assistant regional commissioner, as required in this subpart.

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.626 *Completion of bottling.* When the contents of a bottling tank are not completely bottled at the close of the day the rectifier shall enter on the copy of Form 237 attached to the bottling tank the total quantity bottled that day from such tank, giving all the information required by the form. The Form 237 shall be kept on the tank until the entire contents are bottled. Upon completion of the bottling the rectifier will remove Form 237 from the bottling tank and such form will then be completed and disposed of as provided in Subpart Z of this part.

§ 235.627 *Remnants.* Where, upon the completion of bottling, there remain

bottles less than the number necessary to fill a case, which are not to be removed in accordance with the provisions of § 235.785, such bottles will, after being stamped and labeled in accordance with this part, be removed to the finished products room, where they will be used for filling orders for less than a full case of such spirits, or, when a sufficient number of such bottles have been accumulated, they may be placed in regular cases. Appropriate notation will be made on Form 237 and Form 45 to show the quantity removed to the finished products room as a remnant.

§ 235.628 *Liquor bottles.* The proprietor of a rectifying plant must comply with the provisions of Part 175 of this chapter respecting the use of liquor bottles and other containers for rectified and unrectified products. Marked liquor bottles may not be used for packaging wines containing 24 percent or less of alcohol by volume, or products manufactured with such wines, unless such products contain distilled spirits other than those used in fortifying the wine. Bottles must be filled as nearly as possible to conform to the amount stated on the stamp, and on the label or bottle, to be contained therein, but in no event may the amount of spirits contained in any bottle due to the lack of uniformity of the bottles, vary more than 2 percent from the amount stated to be contained therein and, further, in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of spirits bottled as reported on Form 230 or 237.

(68A Stat. 639; 26 U. S. C. 5214)

§ 235.629 *Red strip stamps.* The proprietor of a rectifying plant must affix to each bottle of distilled spirits and compounds containing distilled spirits filled at his plant, except distilled spirits bottled especially for export with benefit of drawback, a red strip stamp, as provided in Subpart FF of this part. The stamp shall be affixed in such manner that it will be broken on opening the bottle. Red strip stamps shall not be affixed to bottles of wines containing 24 percent or less of alcohol by volume, or products manufactured with such wines, unless such products contain distilled spirits other than those used in fortifying the wine.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.630 *Labels for distilled spirits.* The labels used by rectifiers on bottles of distilled spirits and compounds containing distilled spirits must be covered by a certificate of approval of labels of domestically bottled distilled spirits (Form 1649), or a certificate of exemption from label approval for distilled spirits (Form 1650), issued under Regulations 5 (27 CFR Part 5), issued under the Federal Alcohol Administration Act, as provided in Subpart GG of this part. Labels covered by a certificate of exemption from label approval affixed to bottles of a capacity of one-half pint or more but not exceeding 1 gallon, in which distilled spirits or compounds containing distilled spirits are packaged for sale at

retail, must conform to the provisions of Part 175 of this chapter.

(68A Stat. 639; 26 U. S. C. 5214)

§ 235.631 *Labels for wines.* The labels used by rectifiers on bottles or packages of wines must be covered by a certificate of approval of labels of wine domestically bottled or packed (Form 1649), or a certificate of exemption from label approval for wine (Form 1650), issued under Regulations 4 (27 CFR Part 4), issued under the Federal Alcohol Administration Act. Each bottle in which wine is packaged by a rectifier must bear a securely affixed label showing the name and address of the rectifier; the kind of wine; the alcoholic content by volume, except that if not over 14 percent it may be so stated; and the net contents of the bottle, unless legibly blown in the bottle: *Provided*, That where the wines are bottled for a dealer under a certificate of exemption from label approval, the name and address of such dealer may be substituted for the name and address of the rectifier, if the name and address of the dealer are preceded by the words "Bottled for" or "Bottled expressly for" and the number of the rectifying permit of the rectifier is shown on the label. A separate label showing the data specified in the previous sentence need not be affixed to the bottle if such data is shown on the label covered by the certificate issued under the Federal Alcohol Administration Act regulations.

§ 235.632 *Removal to finished products room.* Upon completion of bottling, the filled bottles, with labels and red strip stamps (where required) properly affixed, must be placed in cases marked in accordance with Subpart HH of this part, the filled cases then sealed and rectified spirits stamps representing tax (if any) due under sections 5022 or 5041, I. R. C., will be canceled and attached to Form 237 in the manner prescribed by §§ 235.585 and 235.586, after which such cases must be immediately removed to the finished products room, except as provided in § 235.104: *Provided*, That the assistant regional commissioner may authorize the rectifier to remove to the finished products room, for storage therein pending the receipt of orders, affixing of brand labels or State stamps or for other acceptable reasons, a reasonable number of unsealed cases of spirits in bottles bearing strip stamps (where required) and labels fully describing the contents, upon condition that the brand labels, if missing, will be affixed and the cases sealed before shipment.

SUBPART BB—TRANSFER OF SPIRITS BY PIPELINE FROM RECTIFYING PLANT TO CONTIGUOUS TAXPAID BOTTLING HOUSE OR RECTIFYING PLANT

§ 235.650 *Assistant regional commissioner may authorize.* The assistant regional commissioner may, in his discretion, authorize the installation of a pipeline for the transfer of spirits from bottling tanks and also from weighing and processing tanks conforming to the requirements of § 235.129, in the rectifying plant to a contiguous taxpaid bottling house or rectifying plant.

§ 235.651 *Application.* A rectifier who desires to transfer spirits by pipeline to a contiguous taxpaid bottling house or rectifying plant, must file application, in triplicate, with the assistant regional commissioner, showing the relative position of the plants and the ownership thereof, and giving a description of the proposed pipeline in accordance with the applicable provisions of §§ 235.262 through 235.264.

§ 235.652 *Action on application.* Upon receipt of the application, the assistant regional commissioner will make such inquiry as he may deem necessary to determine the propriety of granting the permission sought. He will then indicate his approval or disapproval on all copies of the application, and, if approval is granted, will return one copy to the applicant. Where the application is approved, the rectifier will, upon installation of the pipeline, file amended plat, and amended rectifier's notice on Form 27-B, and plans, as provided in § 235.264 in the case of major changes in equipment. The assistant regional commissioner will take appropriate action, pursuant to Subpart O, prior to use of the pipeline. If the application is disapproved, the assistant regional commissioner will return all copies of the application to the applicant with advice as to the reasons for disapproval.

§ 235.653 *Request for transfer of spirits.* Where the transfer of spirits by pipeline from the rectifying plant to contiguous taxpaid bottling house or rectifying plant is authorized, the rectifier will, whenever he desires to so transfer spirits, submit Form 237 or Form 230 to the storekeeper-gauger and request him to unlock the valve in the pipeline and permit the transfer of the spirits. Where the spirits to be transferred are subject to tax, the officer will not permit the transfer thereof to the contiguous taxpaid bottling house or rectifying plant unless all tax due has been paid.

§ 235.654 *Transfer of spirits.* When spirits are to be so transferred, the storekeeper-gauger will see whether the contents of the tank agree with the Form 237 or Form 230, and if found in agreement, and if all taxes due on the spirits have been paid, he will unlock the valve or valves in the pipeline controlling the flow of spirits to the contiguous taxpaid bottling house or rectifying plant and permit the rectifier to transfer the spirits. Immediately the spirits have been transferred, the proprietor will close the pipeline valve or valves and the officer will apply the Government locks thereto. Form 237, prepared as required by this part, will be completed and disposed of as provided in §§ 235.588 and 235.599. Form 230, likewise prepared, will be completed and disposed of as provided in § 235.693.

SUBPART CC—TRANSFER OF SPIRITS BY TANK CAR OR TANK TRUCK

§ 235.660 *Assistant regional commissioner may authorize.* The assistant regional commissioner, upon finding that such operation will not increase on-premise supervision, may, in his discre-

tion, authorize the filling of tank cars or tank trucks with fully taxpaid spirits for shipment to other rectifying plants or to taxpaid bottling houses.

§ 235.661 Application. A rectifier who desires to transfer spirits by tank car or tank truck to another rectifying plant or to a taxpaid bottling house must file application, in triplicate, with the assistant regional commissioner, describing the proposed loading facilities.

§ 235.662 Action on application. Upon receipt of the application, the assistant regional commissioner will make such inquiry as he may deem necessary to determine that the proposed procedure and facilities will not unduly increase on-premise supervision requirements, and will indicate his approval or disapproval on all copies of the application. If the application is disapproved, all copies of the application will be returned to the applicant with advice as to the reasons for disapproval; if the application is approved, one copy will be returned.

§ 235.663 Request for transfer of spirits. Where the transfer of spirits by tank car or tank truck to another rectifying plant or to a taxpaid bottling house is authorized, the rectifier will, whenever he desires to so transfer spirits, submit Form 237 to the storekeeper-gauger and request him to permit the transfer of the spirits. Where the spirits to be transferred are subject to tax, the officer will not permit the spirits to be removed until all tax due has been paid.

§ 235.664 Transfer of spirits. When spirits are to be so transferred, the storekeeper-gauger will determine whether the contents of the tank agree with the Form 237, and if found in agreement, and if all taxes due on the spirits have been paid, he will unlock the valve or valves controlling the flow of spirits to the tank truck or tank car and permit the rectifier to transfer the spirits. Form 237, prepared as required by this part, will be completed and disposed of as provided in §§ 235.588 and 235.599.

SUBPART DD—RECTIFICATION AND BOTTLING OF DISTILLED SPIRITS AND WINES ESPECIALLY FOR EXPORT WITH BENEFIT OF DRAWBACK

§ 235.670 General. Under the law any distilled spirits and wines on which the internal revenue tax has been paid may be rectified and bottled or packaged especially for export at a rectifying plant or rectified at a rectifying plant for bottling or packaging especially for export by a qualified bottler or packer other than the rectifier, and unrectified domestic distilled spirits and wines on which the internal revenue tax has been paid may be bottled or packaged especially for export in a rectifying plant.

§ 235.671 Extent of drawback allowance. Upon the exportation of distilled spirits and wines so manufactured or produced and taxpaid in the United States and bottled or packaged especially for export, there may be allowed a drawback equal in amount to the tax found to have been paid thereon.

§ 235.672 Procedure. The rectification, bottling, and packaging of distilled spirits and wines especially for export, the rectification of distilled spirits and wines to be bottled or packaged especially for export by a qualified bottler or packer other than the rectifier, the bottling and packaging of unrectified domestic distilled spirits and wines especially for export, the storage pending exportation of distilled spirits and wines bottled or packaged especially for export, the exportation of the spirits or wines, including the lading thereof on vessels for use as ship's supplies and on aircraft for use as aircraft's supplies, and the allowance of drawback thereon shall be in accordance with the provisions of Part 252 of this chapter.

(68A Stat. 614; 26 U. S. C. 5062)

SUBPART EE—BOTTLING OF UNRECTIFIED SPIRITS AND WINES

§ 235.685 Notice, Form 230. Proprietors of rectifying plants desiring to bottle taxpaid distilled spirits or wines without rectification will give notice on Form 230, in duplicate, or in triplicate if the spirits are to be transferred for bottling, giving all of the data called for by the form, as indicated by the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part. Where the spirits are to be bottled on the premises a copy of the label which is to be affixed to the bottles of such spirits shall be attached to each copy of Form 230. The rectifier will enter in the space provided thereon on Form 230 the details of the withdrawal gauge for taxpayment when packages of spirits are to be dumped for bottling, or when liqueurs or cordials are authorized to be bottled from the original package, or when spirits received in a tank car or by pipeline are conveyed directly into one bottling tank. When spirits received in a tank car or by pipeline are conveyed directly into more than one bottling tank, or where spirits are withdrawn from a storage tank and run either directly or through a dumping and reducing tank into one or more bottling tanks, the rectifier will enter on a separate Form 230 the details of gauge of each bottling tank giving all applicable information. Each Form 230 will be given a serial number beginning with "1" for the 1st day of January of each year and running consecutively thereafter to December 31, inclusive. A separate Form 230 must be prepared for each tank of spirits to be bottled or to be transferred by pipeline to contiguous premises and the same procedure will be followed for each tank.

§ 235.686 Sealing stamps. The rectifier will cut out with a sharp instrument that portion of the rectified spirits stamp, customs stamp, or wholesale liquor dealer's stamp on each package of spirits to be bottled without rectification, which is required to be cut out at the time spirits are dumped for rectification, as provided in Subpart V of this part. The cut-out portions of the stamps will be securely attached to a

slip of paper in such manner that the data thereon may be readily examined and such slip of paper bearing the cut-out portions of the stamps will be securely attached to the original Form 230.

§ 235.687 Unstamped spirits. Where the stamp on a package of spirits to be dumped for bottling without rectification has been lost or mutilated, so that the required portion thereof cannot be returned, or where spirits received in tank cars or tank trucks bearing certificate of taxpayment, Form 1595, or a wholesale liquor dealer's stamp, or where spirits are received by pipeline from premises other than a rectifying plant, or where spirits in stamped bottles, or wines, are to be dumped for bottling without rectification, the same procedure will be followed as that prescribed in §§ 235.408 and 235.409 in the case of the dumping of spirits or wines from such containers for rectification. When spirits are received by pipeline from a rectifying plant, an explanatory statement will be made in the column provided for the description of stamps on Form 230, as "see Form 230, Serial No. _____, dated _____."

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.688 Submission to officer. After preparation of the notice the rectifier will place the original of Form 230 on the storekeeper-gauger's desk and thereupon will proceed with the bottling. Where packages of spirits are to be dumped for bottling, or where spirits are received by pipeline from contiguous premises (other than rectifying plants) and are conveyed directly into bottling tanks, the withdrawal gauge, Forms 1440 or 1520, will be submitted with the original of Form 230. When spirits are received by pipeline from contiguous rectifying plants, the serial number of the copy of Form 230, or Form 237, received from the rectifier will be noted by the proprietor on Form 230 prepared by him. The storekeeper-gauger will return the Form 230 to the proprietor after noting the operation covered thereby.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.689 Transfer of packages of spirits to bottling tank. Upon placing the original of Form 230 on the storekeeper-gauger's desk, the rectifier will, in the case of packages, dump the spirits and run them either directly or through a dumping and reducing tank into a bottling tank.

§ 235.690 Bottling tank gauge. The rectifier will make an actual gauge of the spirits in the bottling tank after they have been reduced to bottling proof, where such reduction is permissible. The proof of spirits shall be adjusted to a whole degree of proof preparatory to filling bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.4 the proof of the spirits shall be adjusted to such tenths of a degree of proof. The restoration to the original proof and volume of

rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 5021 (b) of the Internal Revenue Code. The details of such gauge, calculated or corrected to volume in accordance with the provisions of the Gauging Manual (Part 186 of this chapter), will be entered in the space provided therefor on all copies of Form 230, and one copy of the form will be attached to the bottling tank.

§ 235.691 Bottling tank to be used. All spirits bottled at a rectifying plant must be bottled from approved bottling tanks: *Provided*, That the assistant regional commissioner may authorize the bottling of wines and certain cordials and liqueurs that require bottling from the original package in the wine bottling room. A rectifier desiring to so bottle such liquors must request approval of the assistant regional commissioner in writing, describing the liquors and showing the necessity for bottling the same from the original package. The assistant regional commissioner will authorize the bottling from the original package of only those wines, cordials, and liqueurs which it is impracticable to bottle from an approved bottling tank.

§ 235.692 Transfer of products to wine bottling room. Where the rectifier desires to bottle from the original package wines, cordials, or liqueurs authorized by the assistant regional commissioner to be so bottled, such packages will be placed in the wine bottling room and Form 230 will be prepared and the original thereof placed on the storekeeper-gauger's desk. When wines, cordials, or liqueurs are to be bottled in the wine bottling room, the rectifier will attach one copy of the Form 230 to the door of such room.

§ 235.693 Disposition of Form 230—transfer. Upon completion of the transfer of spirits to the taxpaid bottling house or rectifying plant, there shall be entered on all copies of Form 230 a statement that the spirits described on such form have been transferred by pipeline to bottling (storage) tank No. _____ in the contiguous taxpaid bottling house (rectifying plant) operated by _____, together with the date of such transfer. The rectifier will, just prior to such transfer, furnish a copy of Form 230 to the storekeeper-gauger at the receiving taxpaid bottling house or rectifying plant, and will immediately forward the original copy of Form 230, with the cut-out portions of the stamps, or the statement required in lieu thereof, to the assistant regional commissioner, and will retain his copy of the form in a permanent file as prescribed in § 235.833. The storekeeper-gauger at the receiving plant will deliver his copy of Form 230 to the proprietor of that plant after the spirits have been received, and the proprietor will attach the copy to the storage tank, or to Form 122 on the bottling tank, depending on whether the spirits have been deposited in storage tank or bottling tank.

§ 235.694 Preparation of statement of composition. Where spirits are to be removed for bottling elsewhere, the rectifier shall prepare a statement of composition identifying the spirits and providing such information as will, in conjunction with the information shown on the packages or on Form 230 covering pipe line transfer, permit verification of the label proposed to be used in bottling. The statement must include all pertinent information which is mandatory on the label for the particular product. Such statement shall be signed by the rectifier and delivered to the purchaser of the spirits for delivery to the bottler or to the proprietor of the premises where the spirits are to be bottled.

§ 235.695 Rinsing of barrels; destruction of stamps, marks, etc. When packages of spirits are dumped for bottling without rectification the provisions of §§ 235.414, 235.416, 235.417, and 235.483, respecting the destruction of stamps and marks and brands, the rinsing of barrels and wood chips contained therein, and the disposition of wood chips, when packages of spirits are dumped for rectification, shall be applicable.

(68A Stat. 651.830; 26 U. S. C. 5281, 5282, 6804)

§ 235.696 Taxpayment of rinsings. In lieu of the procedure prescribed in § 235.695 concerning the rinsing of packages, the proprietor may rinse and save the rinsings from packages, to any extent desired, which were not rinsed in the internal revenue bonded warehouse at the time of taxpayment and are so marked in accordance with the provisions of Part 225 of this chapter: *Provided*, That the rinsings are run into a closed, locked tank for taxpayment of the proof gallon contents. Such rinsings may be used for reduction purposes, or in the manufacture of rectified spirits or products subject to the rectification tax. When used for reduction, the rinsings must be used in similar spirits. When used in the manufacture of rectified spirits or products, the rinsings may be used with any other appropriate spirits. The construction of the tank, the gauging, taxpayment and the use of the rinsings, and the accounting for distilled spirits stamps received and used for the taxpayment of such rinsings, will be in accordance with the provisions of § 235.418. Packages of imported spirits may similarly be rinsed and the rinsings saved if taxpaid in accordance with this procedure.

(68A Stat. 651; 26 U. S. C. 5281, 5282)

§ 235.697 Mingling of different spirits prohibited. Spirits of less than 190 degrees of proof which were produced from different materials, or by two or more distillers, or at two or more distilleries, or which have been subjected to different acts of rectification, or which differ in kind according to the standards of identity established under the Federal Alcohol Administration Act, or which are otherwise heterogeneous, may not be mingled in a dumping and reducing or bottling tank for convenience in bottling. Examples of spirits which are otherwise heterogeneous are spirits which have been quick-aged and spirits which have

not been quick-aged, and spirits which have been stored in different kinds of cooperage. Such spirits of the same composition, produced at approximately the same proof by the same distiller at the same distillery, and differing in age (a) not more than 6 months in the case of spirits more than 2 years of age, (b) not more than 60 days in the case of spirits more than 1 year and not more than 2 years of age, or (c) not more than 30 days in the case of spirits one year of age, or less, and packaged in the same kind of cooperage will be presumed to be homogeneous, and may be mingled in a dumping and reducing or bottling tank for convenience in bottling. Where it is desired to mingle spirits falling within more than one of the age categories specified, the difference in age allowable shall be determined according to the age of the younger spirits. For example, if spirits not more than one year of age are mingled with spirits more than 1 year old, the spirits must not vary in age more than 30 days. Packages of blended or rectified spirits filled from the same blend or rectification, or from different blends or rectifications made with precisely the same spirits under the same formula, packaged in the same kind of cooperage, and stored under the same conditions, will likewise be presumed to be homogeneous, and may be dumped together for convenience in bottling. Spirits of 190 degrees of proof or more, distilled from the same class of materials (such as grain) will be presumed to be homogeneous and may be mingled in a dumping and reducing or bottling tank for convenience in bottling. Wines of the same kind (class, type, and national origin) and taxable grade will be presumed to be homogeneous, and may be mingled together for convenience in bottling.

(Sec. 5, 49 Stat. 981, as amended, 68A Stat. 606, 616, 665; 27 U. S. C. 205, 26 U. S. C. 5021, 5082, 5363)

§ 235.698 Testing of spirits dumped together for bottling. Whenever there is doubt as to whether the dumping together of the contents of two or more containers of spirits constitutes rectification, a sample of each component of the proposed mixture should be compared with a sample of the final mixture by chemical analysis and by taste, color, and other tests to ascertain whether the mixture is homogeneous with each of its component parts. The regular dumping together of spirits of different ages, or different blends or rectifications, at the time of bottling is indicative of blending (rectification). The assistant regional commissioner will make appropriate inquiry where such dumping is done pursuant to Form 230 to determine whether the mass of spirits dumped together is homogeneous with each of its component parts.

§ 235.699 Reduction of spirits. Spirits may be reduced in proof in storage, dumping and reducing, or bottling tanks, prior to the commencement of bottling. The reduction in proof or the increasing in volume of rectified spirits on which the rectification tax has been paid is, however, prohibited by law, unless the spirits are again rectified and the recti-

fication tax again paid thereon. However, the restoration to the original proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 5021 (b), I. R. C. Section 5021 (b), I. R. C., is not applicable to the reduction of imported spirits rectified abroad, or spirits rectified in Puerto Rico, or the Virgin Islands, or of domestically rectified spirits exempt from rectification tax.

§ 235.700 *Filtration.* Spirits dumped for bottling without rectification may be filtered before being bottled, provided that the method of filtering employed is such as will not constitute rectification. (See Subpart W of this part.)

§ 235.701 *Completion of bottling.* When the contents of a bottling tank are not completely bottled at the close of the day the rectifier shall enter in his certificate on the copy of Form 230 attached to the bottling tank the total quantity bottled that day from such tank, giving all the information required by the form. The Form 230 shall be kept on the tank until the entire contents are bottled. Upon completion of the bottling the rectifier will remove Form 230 from the bottling tank and complete the execution of his certificate on all copies.

§ 235.702 *Remnants.* Remnants left over upon completion of the bottling of unrectified spirits will be disposed of in accordance with the procedure prescribed in § 235.627 for the disposition of remnants of rectified spirits, except that notation of the removal of the spirits to the finished products room will be made on Form 230 in lieu of Form 237.

§ 235.703 *Disposition of Form 230—bottling.* Immediately after the completion of the bottling and the proper completion of Form 230, the rectifier will forward the original copy of the form, with the cut-out portions of the stamps, or the statement required in lieu thereof, to the assistant regional commissioner, and will file the remaining copy as a permanent record at the plant available for inspection by internal revenue officers. Where the spirits were transferred to the rectifying plant for bottling from a contiguous rectifying plant, the bottling Form 230 with the extra copy of Form 230 or Form 237 attached as evidence of the taxpaid status of the spirits, as provided by §§ 235.588, 235.599, and 235.693, will be filed by the proprietor. The original copy of Form 230 will be forwarded immediately to the assistant regional commissioner.

§ 235.704 *Unrectified products to be kept separate.* When unrectified spirits or wines are being bottled in a rectifying plant, such liquors must be kept completely separate and apart from rectified spirits and products.

§ 235.705 *Removal to finished products room.* Upon completion of the bottling of spirits or wines without rectification the filled bottles, with labels and red strip stamps (where required) properly affixed, must be placed in cases

marked in accordance with Subpart HH of this part, the filled cases then sealed and immediately removed to the finished products room, except as provided in § 235.104; *Provided*, That the assistant regional commissioner may authorize the rectifier to remove to the finished products room for storage therein pending receipt of orders, affixing of brand labels or State stamps, or for other acceptable reasons, a reasonable number of unsealed cases of spirits in bottles bearing strip stamps (where required) and labels fully describing the contents, upon condition that the brand labels, if missing, will be affixed and the cases sealed before shipment.

§ 235.706 *Rebottling, relabeling, and restamping of bottled spirits.* Where distilled spirits packaged in bottles are to be rebottled for domestic sale, the bottles, if of a capacity of one-half pint or greater and not exceeding 1 gallon, must conform to the requirements of Part 175 of this chapter. The new label must be covered by an appropriate certificate of label approval (Form 1649) or a certificate of exemption from label approval (Form 1650). If the new label is covered by a certificate of exemption from label approval, it must conform to the requirements of Part 175 of this chapter. If the spirits have left the possession of the original bottler and are to be relabeled without rebottling, authorization to relabel the spirits must be obtained in accordance with Regulations 4 and 5 (27 CFR Parts 4 and 5) issued pursuant to the Federal Alcohol Administration Act and submitted to the internal revenue officer assigned to the plant. Whenever bottled distilled spirits are dumped for rebottling, the red strip stamps on the bottles must be destroyed at the time of dumping, and new red strip stamps must be affixed to the bottles in which the spirits are rebottled. Such rebottling, relabeling, and restamping operations may be performed in the absence of the officer. All products rebottled will be dumped pursuant to Form 230 and will be reported on Form 45 in accordance with the instructions printed thereon.

(68A Stat. 602, 639, 651; 26 U. S. C. 5008, 5214, 5281)

SUBPART FF—STAMPS

RECTIFIED SPIRITS STAMPS (FOR BOTTLING TANKS)

§ 235.715 *Denominations; purchase and use.* Stamps for the taxpayment of rectified spirits in bottling tanks may be purchased in various denominations from the district director of internal revenue of the district in which the rectifying plant is located. Stamps may not be purchased by one rectifier from another, nor may they, except in cases of emergency, be purchased from district directors of other districts. Stamps may be sold only to proprietors of rectifying plants, or as provided in Part 250 of this chapter. Rectifiers shall not sell or transfer stamps except that they may transfer such stamps to other rectifying plants operated by themselves as provided in § 235.720 pursuant to the prior approval of the assistant regional commissioner; or return such stamps for re-

demption in accordance with § 235.721. Rectified spirits stamps used or unused may not be purchased, sold, or possessed, except as specifically provided by law or this part, or by Part 250 of this chapter.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.716 *Form 427-C.* With each purchase of stamps the rectifier will submit to the district director Form 427-C, in triplicate, properly executed. The district director will stamp the date of sale on all copies of Form 427-C, and return one copy to the rectifier with the stamps. The district director will refuse to sell stamps when such form is not submitted.

§ 235.717 *Remittance; delivery.* All orders for stamps must be accompanied by proper remittance in a sum equal to the value of the stamps. Unless the stamps are called for by the rectifier or his agent in person, they will be sent to him by ordinary mail, registered mail, or express, at the expense of the rectifier. When the stamps are not called for in person, the rectifier will specify on Form 427-C the means (ordinary mail, registered mail, or express) by which he desires the stamps sent to him. If the stamps are ordered to be sent by ordinary mail, the rectifier shall enclose with his order sufficient postage stamps, or a separate remittance to cover the postage; if the stamps are ordered to be sent by registered mail, the rectifier shall include the postage and registry fee and any required registry surcharge, as provided by the postal laws and regulations. If the remittance is other than cash, the sum to cover the postage, registry fee, or surcharge, must not be included in the remittance covering the cost of the stamps. The local postmaster should be consulted relative to the amount of the registry fee and surcharge required. Stamps forwarded by express will be sent "collect."

(68A Stat. 777; 26 U. S. C. 6311)

§ 235.718 *Manner of canceling stamps.* At the time of delivery of the stamps to the storekeeper-gauger for payment of the rectified spirits tax, the rectifier shall cancel the stamps by perforation (as prescribed by § 235.719) or by legibly writing or stamping on each stamp with indelible (India) ink, his name, registry number, and the serial number of Form 237; for example, "John Doe Company, Rectifying Plant No. 63, New Jersey, Form 237 Serial No." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the Form 237 must not be entered on the stamp in advance of actual use in payment of the rectification tax. The assistant regional commissioner may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Co. RP 63-NJ-237-S/N." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The storekeeper-gauger,

after determining that the canceled stamps are in the proper amount of the tax due, will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.719 Manner of perforating stamps. If the rectifier's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (a) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (b) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and the figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.720 Transfer to other premises. When the rectifying plant is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other rectifying plants in which the stamps could be used, he may transfer the stamps to such other premises for use thereat. Permission to so transfer stamps to other premises must be first obtained from the assistant regional commissioner. If the rectifying plant to which the stamps are to be transferred is located in another region, the assistant regional commissioner granting authority to transfer the stamps will advise the assistant regional commissioner of the other region so that he may know that the receiving rectifying plant is entitled to receive the stamps. The latter assistant regional commissioner will also inform the storekeeper-gauger assigned to the receiving rectifying plant of the authority to receive stamps from other rectifying plants. Record of such transfers of stamps must be made on Form 45, as provided in § 235.723.

§ 235.721 Redemption of rectified spirits stamps; claim to district director. Rectifiers desiring to have rectified spirits stamps redeemed under the provisions of section 6805, I. R. C., must make claim on Form 843 to the district director of internal revenue. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the assistant regional commissioner establishing such destruction must accompany the claim.

§ 235.722 Unredeemable stamps. Rectified spirits stamps may not be redeemed while rectified spirits, on which the stamps can be used in taxpayment, remain on hand and while the rectifying plant remains in a qualified status.

When a rectifying plant is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other rectifying plants at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat. Notation of the transfer must be made on Form 45 of both premises.

§ 235.723 Stamp record. The rectifier shall keep a record on Form 45 of all rectified spirits stamps for bottling tanks received and used at his rectifying plant. When rectified spirits stamps are surrendered for redemption, in accordance with § 235.721, or are transferred to, or received from, other rectifying plants operated by the proprietor, as authorized in § 235.720, record thereof must be made on Form 45, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the stamps were transferred or from which they were received.

RECTIFIED SPIRITS STAMPS (FOR PACKAGES)

§ 235.724 Two classes. Stamps for rectified spirits are provided in two classes: class A, for products of rectification to which the rectifying tax of 30 cents per proof gallon does not attach; and class B, for products of rectification to which the rectifying tax of 30 cents per proof gallon does attach.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.725 Denominations. Rectified spirits stamps of classes A and B are provided in denominations of 1, 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120 and 130 proof gallons, with 9 coupons attached representing 1 gallon each, and 9 coupons representing one-tenth of a gallon each.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.726 District director to issue stamps. When Form 237, properly approved, showing that packages (barrels, kegs, or similar containers) of rectified spirits or products have been filled by the rectifier, is submitted to the district director without remittance in the case of rectified spirits or products exempt from the rectification tax, or with proper remittance in the case of rectified spirits or products subject to the 30-cent rectification tax, the district director will issue class A or class B stamps, respectively, of the proper denomination with the required coupons attached for each package listed on the form.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.727 Issuance of stamps. Upon issuing the stamps, the district director will enter on each stamp the internal revenue district, name of the rectifier, the date of issuance, the proof gallons, and the serial number of the package for which the stamp is issued. The district director will also enter the serial number of each stamp in the column provided therefor on Form 237 opposite the serial number of the package, unless stamps are issued for several pack-

ages in consecutive order, in which case the numbers of the first and last stamps will be entered opposite the serial numbers of the first and last packages with an intervening wavy line indicating that the omitted numbers follow consecutively from the first to the last.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.728 Stamp stub. Connected with each stamp is a corresponding stub, and the district director shall enter thereon the data called for necessary to preserve a perfect record of the use of such stamp when detached.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.729 Affixing of stamps. Each rectified spirits stamp must be affixed to the package containing the spirits or products which it was issued to cover. Such stamps may not under any circumstances be affixed to other packages of spirits. The stamps must be securely affixed to a smooth surface of the Government head of the cask or package (the head bearing the marks and brands required by Subpart HH). That surface must not have been previously painted or covered with any oily substance or any substance which would have a tendency to cause the stamp to crack or peel off. Varnish, glue, or other adhesive material which would cause the stamp to adhere securely must be used for affixing the stamp to the package.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.730 Cancellation. The stamp having been affixed must be immediately canceled. For this purpose the rectifier will use a stencil plate in which have been cut not less than five fine parallel wavy lines long enough to extend not less than three-fourths of an inch above and below the stamp on the head of the cask or package. This plate must be imprinted with black, durable coloring material over and across the stamp as indicated. The stencil plate will be so set as to bring the five parallel wavy lines across the stamp at such points as will least obscure the reading matter on the stamp. The coloring material will be so applied with the brush as to make these lines distinct without blotting or spreading over the stamp. The stencil plates, with the edges of the cuttings of the lines, will be kept clean and the coloring material will be carefully examined to see that it is of a quality which will make a distinct and durable mark, without blotting or spreading.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.731 Covering. The stamp having been so affixed and canceled must be immediately covered with a coating of transparent varnish, shellac, or lacquer. No varnish, shellac, or lacquer shall be used which is not transparent or which is oily enough to affect in the least the glue or other adhesive on the stamp.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.732 Proprietor to furnish all necessary labor. All necessary labor in connection with the affixing, canceling, and covering of stamps affixed to pack-

ages of spirits shall be furnished by the rectifier.

WHOLESALE LIQUOR DEALER'S STAMPS

§ 235.733 *Circumstances authorizing procurement.* Where distilled spirits are to be transferred by tank car or tank truck, or where, because of the discontinuance of business or change of location or desire to return to the vendor distilled spirits found to be unsuitable after the deposit thereof in storage tanks or the dumping thereof from the stamped packages in which received, or for other lawful reasons, the rectifier desires to fill packages of distilled spirits containing five wine gallons or more, in cases where the spirits are eligible to be packaged under such stamps, he may, if qualified as a wholesale liquor dealer, procure wholesale liquor dealer's stamps for the packages from the storekeeper-gauger.

(68A Stat. 620; 26 U. S. C. 5115)

§ 235.734 *Notice of intent to package.* Except in the case of shipments by tank car or tank truck, rectifiers who desire to draw distilled spirits into wholesale liquor dealer's packages of 5 wine gallons or more, as authorized in § 235.733, will give written notice of such intent prior to packaging the spirits. The notice shall be on letterhead stationery, in triplicate, shall describe in detail the spirits to be drawn into such packages, and shall state whether or not the spirits have been subjected to any act of rectification by the proprietor. The description shall include (a) the kind of spirits, the proof, and the proof gallons; (b) the kind and serial numbers of the containers in which the spirits are held; and (c) the kind and serial numbers of the stamps on such containers. If the spirits to be packaged have been dumped into a tank from the containers in which received, the notice shall show, in addition to other applicable data, the date and number (122 or 230) of the form pursuant to which the spirits were dumped. If the spirits were received in a tank car or tank truck, the notice shall show, in addition to other applicable data, the date the certificate of taxpayment (Form 1595) or wholesale liquor dealer's stamp, as the case may be, was submitted to the assistant regional commissioner. Should the spirits, which it is permissible to transfer to wholesale liquor dealer's packages under § 235.733, be contained in stamped packages, the stamps thereon must be cut out and the cut-out portions securely attached by means of a staple, eyelet, or similar device, to a slip of paper in such manner that the data thereon may be readily examined, and such slip of paper bearing the cut-out portions of the stamps will be securely attached to the original of the notice.

(68A Stat. 620; 26 U. S. C. 5115)

§ 235.735 *Filling, gauging, and marking packages.* After preparation of the notice, the proprietor will place all copies on the storekeeper-gauger's desk, and thereupon may proceed with the transfer of the spirits to the wholesale liquor dealer's packages. The packages will be filled in accordance with the procedure described in § 235.567, gauged in accord-

ance with the rules prescribed in the gauging manual (Part 186 of this chapter), and marked and branded in accordance with the provisions of Subpart HH of this part.

§ 235.736 *Request for stamps.* When the spirits have been properly packaged, gauged, and marked, the rectifier will enter all details of gauge on Form 1520, prepared in quadruplicate. Below the last entry the proprietor will write or stamp on each copy a request for issuance of wholesale liquor dealer's stamps for the package described, and will deliver all copies of the form to the storekeeper-gauger.

§ 235.737 *Issuance of stamps.* Upon receipt of the Form 1520 with request for wholesale liquor dealer's stamps written or stamped thereon, the storekeeper-gauger will issue a stamp for each package listed, if he finds after inspection that the spirits are correctly described, and have been properly taxed, and have not been subjected to any act of rectification by the proprietor, and that the rectifier is entitled to receive the stamps as provided in § 235.733. When issuing the stamps, the storekeeper-gauger will enter on each stamp all the information called for and sign the stamps in the space provided therefor. The storekeeper-gauger may enter his signature by means of a facsimile stamp. Where an appreciable number of wholesale liquor dealer's packages will be filled, the rectifier must provide the storekeeper-gauger with suitable rubber stamps for the insertion of information common to all wholesale liquor dealer's stamps to be used by him.

(68A Stat. 620; 26 U. S. C. 5115)

§ 235.738 *Wholesale liquor dealer's stamps for rectified spirits.* Storekeeper-gaugers may not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits, unless the package covered by the stamp for rectified spirits is to be broken into smaller packages. Wholesale liquor dealer's stamps will be used to stamp tank cars or tank trucks which are filled from bottling tanks containing rectified distilled spirits on which all required taxes have been paid.

(68A Stat. 609; 26 U. S. C. 5027)

§ 235.739 *Affixing and canceling of stamps.* Upon receipt from the storekeeper-gauger of Form 1520 (Form 237 in the case of tank cars and tank trucks) and the accompanying stamps, the rectifier will affix the stamps to the packages and cancel the same in the same manner as rectified spirits stamps are required in this subpart to be affixed and canceled.

(68A Stat. 830; 26 U. S. C. 6804)

§ 235.740 *Disposition of Form 1520 and notice.* The storekeeper-gauger will enter the serial numbers of the wholesale liquor dealer's stamps in the proper column on each copy of Form 1520, opposite the description of the package for which the stamp is issued. He will then return two copies of Form 1520 and one copy of the notice to the rectifier with the stamps, forward the original Form

1520 and the original notice with stamps attached, if any, to the assistant regional commissioner and retain the remaining copy of Form 1520 and notice in a permanent file as authority for issuance of the stamps. The rectifier will forward one copy of Form 1520 to the vendee.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.741 *Preparation of statement of composition.* Where a rectifier packages distilled spirits in wholesale liquor dealer's packages for removal to other qualified premises for bottling or where a rectifier transfers spirits by pipeline, tank car, or tank truck to another rectifying plant for additional rectification, he shall prepare a statement of composition identifying the packages and providing such information as will, in conjunction with the information shown on the packages, permit verification of the label proposed to be used in bottling. The statement must include all pertinent information which is mandatory on the label for the particular product, for example, the presence or absence of flavoring material, artificial coloring, treatment with oak chips, quick-aging, etc. Such statement shall be signed by the rectifier and forwarded to the purchaser of the spirits for delivery to the bottler or to the proprietor of the premises where the spirits are to be bottled.

§ 235.742 *Records.* Where distilled spirits which have been dumped for bottling without rectification are packaged under wholesale liquor dealer's stamps, the rectifier shall enter a full description of the packages and their contents in his certificate on Form 230, together with a reference to the Form 1520 under which the wholesale liquor dealer stamps were issued. The rectifier shall also make appropriate entries and notations on Form 45 whenever any distilled spirits are packaged and removed under wholesale liquor dealer's stamps.

(68A Stat. 620; 26 U. S. C. 5115)

DESTRUCTION OF STAMPS, MARKS, AND BRANDS UPON EMPTYING CONTAINERS

§ 235.743 *Immediate destruction required.* When containers in which distilled spirits or wines are received, including tank cars and tank trucks, are emptied, all stamps, marks, brands, labels or tags, required by law or regulations to be placed thereon, must be destroyed by scraping or obliterating immediately the containers are emptied, except for the portions of stamps or certificates required to be submitted to the assistant regional commissioner: *Provided*, That wine containers which are to be returned to the winery or wine cellar for reuse (refilling), may retain the name, address, and registry number of the proprietor.

RED STRIP STAMPS

§ 235.744 *Requisition, Form 428.* Proprietors of rectifying plants may procure red strip stamps in anticipation of current needs. Requisition for red strip stamps will be made by proprietors on Form 428, in triplicate.

§ 235.745 *Stamp denominations.* Red strip stamps will be provided in the following denominations only: 1 gallon, ½

gallon, 1 quart, $\frac{1}{2}$ quart, $\frac{3}{4}$ quart, 1 pint, $\frac{1}{2}$ pint, $\frac{3}{4}$ pint, $\frac{1}{2}$ pint, and less than $\frac{1}{2}$ pint. When bottles containing spirits are of sizes for which no stamps are provided, the rectifier will use stamps of the denomination next under the actual quantity of spirits contained in the bottles, as, for instance, a stamp of the $\frac{1}{2}$ -pint denomination for a bottle containing more than $\frac{1}{2}$ pint and less than $\frac{3}{4}$ pint, and will block or strike out the original denomination and write or print on the stamps immediately above the blocked or stricken out denomination the exact quantity of spirits contained in the bottles. Stamps of the denomination of "less than $\frac{1}{2}$ pint" need not be changed to show the exact quantity contained in the bottles. Red strip stamps will be issued 50 in a sheet. Stamps less than a full sheet will not be issued by a district director to a rectifier.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.746 Approval of requisition. The proprietor will submit all copies of the requisition, Form 428, to the storekeeper-gauger for approval. Before approving the requisition, the approving officer will see that it is properly executed and will satisfy himself that the number of stamps for which requisition is made is necessary for the current needs of the rectifier. No red strip stamps may be issued for use at a rectifying plant unless Form 428 is approved. Upon approval of the form, the approving officer will return all copies to the rectifier.

§ 235.747 Procurement of stamps. Red strip stamps may be obtained, possessed, used, and disposed of, only as specifically provided by law or regulations. Red strip stamps will be furnished without charge to proprietors of rectifying plants by the district director of the district in which such plants are located. Except in cases of emergency, they will not be furnished by district directors of other districts. The proprietor will forward all copies of the approved requisition, Form 428, to the proper district director who will enter the serial numbers of the stamps issued, stamp the date of issuance on all copies of the Form 428, and return one copy of the form to the proprietor with the stamps. The proprietor will deliver the copy of Form 428 and the stamps to the storekeeper-gauger for verification of receipt, and after such verification will enter receipt of the stamps on Form 182.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.748 Shipment of stamps. Red strip stamps will not be shipped by ordinary mail. Unless delivered directly to the proprietor or his messenger by the district director, stamps will be shipped either by registered mail or by express. If the proprietor wishes the shipment to come by registered mail, a remittance covering postage, registry fee, and any required registry surcharge must accompany the requisition Form 428. The local postmaster should be consulted regarding the amount of registry fee and surcharge required. If stamps are sent by express they will be sent "collect".

§ 235.749 Requisitions to be filed. Rectifiers will retain copies of Form 428 returned by the district director at the plant as a record available for inspection by internal revenue officers, and will file them in chronological order.

§ 235.750 Rectifier's responsibility. Rectifiers who have custody of red strip stamps will be held strictly responsible for the proper control and accounting of all stamps received, used, and on hand. They shall be held responsible for the proper affixing of the stamps to bottles of taxpaid spirits and for making a proper accounting for all stamps reported mutilated.

§ 235.751 Manner of affixing stamps. The stamps must be securely affixed to the bottles with the use of a good adhesive. The adhesive used must be in proper liquid condition, and care must be taken to cover the entire back of the stamp with the adhesive, and to press the whole surface of the stamp firmly against the surface of the bottle sufficiently long to cause the entire surface of the stamp to adhere securely to the bottle. The stamp must be affixed in such manner that it will be broken when the bottle is opened, but so placed that a portion will remain attached to the opened bottle.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.752 Concealing or obscuring stamps prohibited. No part of the stamp shall be concealed or obscured by any label or other covering, except that a cup may be placed over the opening of the bottle or the bottle may be placed in a carton, as provided in this section. Seals made of cellulose or other material which are shrunk or otherwise fitted over the necks of the bottles and cover the stamps must be sufficiently transparent to permit the stamps to be plainly seen and the data thereon easily read. No cup or cap may be placed over the opening of a bottle and cover the stamp, unless such cup or cap is transparent or is so placed on the bottle that it may be readily removed at any time without injury to the stamp and the arrangement is such that a portion of the stamp will be plainly visible when the cap or cup is in place. Cartons or other coverings of bottles of distilled spirits are permitted, if so made that they may be opened and closed without being torn or broken. Sealed cartons or other coverings may not be used unless transparent or unless openings therein permit the data on the stamp and the indicia on the bottle to be plainly seen and read.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.753 Affixing stamp over cup or cap. The stamp may be affixed over a cup or cap placed over the opening of the bottle, provided the cup or cap is securely screwed or fastened over the opening of the bottle and the stamp is securely affixed, with a strong adhesive, to both the cup or cap and the bottle in such a manner that the stamp will be broken when the cup or cap is unscrewed or removed. Where it is desired to affix the stamp over a cap or seal made of cellulose or other similar adhesive material which is so shrunk or otherwise fitted

over the neck of the bottle as to be unremovable without being destroyed, it will not be necessary for the ends of the stamp to be affixed to the surface of the bottle, but the cap or seal and stamp must be so affixed that a portion of each will remain attached to the bottle when it is opened. In any case where there is doubt as to the propriety of the use of any cup or cap, the bottle and cup or cap should be submitted to the assistant regional commissioner for a ruling thereon.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.754 Bulk containers in excess of 1 and not more than 5 gallons. Where unrectified alcohol or other unrectified distilled spirits are packaged in containers in excess of 1 gallon and not more than 5 gallons, a red strip stamp must be securely affixed to the container in such a manner that the stamp will be broken when the container is opened. Stamps of 1-gallon denomination will be used for such containers and the denomination of the stamp will be changed by obliterating the figure "1" on each end of the stamp over the abbreviation "Gal." and writing or printing immediately above the same other figures representing the exact contents of the container. Alcohol and other distilled spirits in such containers may be sold or disposed of only as provided in § 235.805, relative to sales in bulk containers.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.755 Non-usable strip stamps. Strip stamps issued by foreign countries may not be affixed to either imported or domestic spirits bottled at rectifying plants and intended for domestic consumption, nor may red strip stamps which have been mutilated be used at such plants. Red strip stamps that have been mutilated should be destroyed by the rectifier under the supervision of an internal revenue officer. The rectifier will enter appropriate credit on Form 182 for the number of each denomination of stamps so destroyed.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.756 Disposition of red strip stamps. All unused red strip stamps, if any, belonging to the proprietor at the time of permanent discontinuance of business will be inventoried by denomination, serial number and quantity, and the inventory will be verified by the storekeeper-gauger or other officer designated by the assistant regional commissioner to perform such duty. Stamps which have been cut shall be destroyed under the supervision of the officer. Stamps which have not been cut will be disposed of in accordance with instructions from the assistant regional commissioner.

(68A Stat. 602; 26 U. S. C. 5008)

SUBPART GG—LABELS ON BOTTLES OF SPIRITS

§ 235.770 Certificates of approval or exemption. All bottlers of wines or distilled spirits, are required by Regulations 4 or 5 (27 CFR Parts 4 or 5) issued under the Federal Alcohol Administration Act to obtain a certificate of approval of labels (Form 1649) or a certificate of ex-

emption from label approval (Form 1650) before using labels on bottles of wines or distilled spirits.

(Sec. 5, 49 Stat. 1965; 27 U. S. C. 205)

§ 235.771 *Certificates to be exhibited.* All bottlers of spirits are required to exhibit certificates of label approval (Form 1649) or certificates of exemption from label approval (Form 1650) upon request by an internal revenue officer. The original certificate or duplicate original issued under the Federal Alcohol Administration Act regulations must be exhibited to the officer. Photostatic copies are not acceptable for this purpose.

(Sec. 5, 49 Stat. 1965; 27 U. S. C. 205)

§ 235.772 *Samples.* Officers assigned to rectifying plants will secure samples of finished labeled products from the bottling line at irregular intervals for submission to the regional chemist.

§ 235.773 *Tests of bottled spirits.* Storekeeper-gaugers assigned to rectifying plants will, at irregular intervals during the process of bottling, test and examine the bottled spirits to determine whether the label attached is identical with the label affixed to Form 230 or 237, as the case may be, attached to the bottling tank and with the certificate of label approval or label exemption; whether the bottled spirits agree in proof with the data on the label; and whether the quantity agrees with the data on the label, stamp or bottle, subject to the limitation prescribed in § 235.628. The test as to proof will be made in accordance with the provisions of the gauging manual (Part 186 of this chapter). The test as to quantity will be made by the utilization of a glass graduate standardized at sixty degrees Fahrenheit to be provided by the rectifier, or by weighing a given number of empty bottles and reweighing the same bottles after filling. The net contents will be computed in accordance with the provisions of the gauging manual (Part 186 of this chapter). If the contents do not agree as to quantity (subject to the limitation of § 235.628) or as to proof (subject to a normal drop in proof occurring during bottling operations not to exceed three-tenths of a degree), with the respective data on the label, stamp or bottle, the storekeeper-gauger will require the rectifier to rebottle, recondition, or relabel the spirits in such manner that the labels will correctly describe the contents. However, the proof at the beginning of the bottling operations shall always be set exactly as provided in §§ 235.566 and 235.590.

§ 235.774 *Rectifier's responsibility.* Full responsibility rests upon the rectifier to see that the labeling of all distilled spirits and wines bottled or packaged at his plant is in conformity with the requirements of Regulations 4 and 5 (27 CFR Parts 4 and 5) issued pursuant to the Federal Alcohol Administration Act, and with the requirements of Part 175 of this chapter.

SUBPART HH—MARKING AND BRANDING

SERIAL NUMBERS

§ 235.785 *Method of numbering.* Each case, barrel, cask, or similar container filled at a rectifying plant, includ-

ing packages and cases of unrectified spirits and wines, must be numbered serially, beginning with No. 1 for the first case or package filled: *Provided*, That the series in current use at existing rectifying plants will be continued. Where, upon completion of bottling, there remain less than the number of bottles necessary to fill a case, and the rectifier desires to dispose of such bottles as a remnant case, the case will be given the serial number of the last full case of the same bottling lot followed by the letter "R", thus, "100R", or "161R". Where there is a change in the individual or corporate name, or in the trade name or style, of the rectifier, the series in use at the time of such change will be continued, but a new series will be commenced where there is a change of proprietorship.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.786 *New or separate series.* The serial numbers of the cases and packages filled at a rectifying plant shall run consecutively and shall not be broken in any manner, except that whenever the number 1,000,000 is reached the rectifier may, if he so desires, begin a new series commencing with No. 1, and that where two or more separate bottling units are used and different kinds of spirits are bottled simultaneously, and it is impracticable to number the cases of each kind of spirits consecutively, a series identified by a letter may be used for each bottling unit, as A1, A2, etc., and B1, B2, etc. Likewise, where cases and packages are filled simultaneously, and it is impracticable to number the cases and packages consecutively, a separate series followed by an identifying letter may be used for the packages and one or more separate series, as provided in this section, may be used for the cases. Cases may be serially numbered either before or after filling.

(68A Stat. 651; 26 U. S. C. 5282)

OTHER REQUIRED MARKS

§ 235.787 *Packages of distilled spirits.* In addition to the serial number, there shall be plainly and durably burned, cut, imprinted, or stenciled, on the Government head of each barrel or similar container of distilled spirits the kind of spirits, the wine-gallon content, the proof of the spirits, the proof-gallon content, the date of filling, the number of the approved formula under which rectified, the name (or trade name or style) of the rectifier, the location (city or town, and State) of the rectifying plant, and the number of the rectifier's basic permit (Form 1638) issued pursuant to Regulations 1 (27 CFR Part 1) issued under the Federal Alcohol Administration Act: *Provided*, That if the spirits were rectified by such rectifier, or if the spirits are unrectified spirits which were produced by such rectifier at a distillery, he may use in connection with his name the designation "Rectifier" or "Distiller," respectively.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.788 *Cases of distilled spirits.* In addition to the serial number, each case of distilled spirits shall have marked on the Government side thereof the kind of spirits, the wine gallons, proof, and proof

gallons, the date of filling, and the name (or trade name or style), location (city or town and State), and the number of the rectifier's basic permit issued under the Federal Alcohol Administration Act regulations (27 CFR Part 1): *Provided*, That if the spirits were rectified by such rectifier, or if the spirits are unrectified spirits which were produced by such rectifier at a distillery, or if the spirits were neither rectified nor produced by such rectifier, he may use in connection with his name the designation "Rectifier," "Distiller," or "Bottler," respectively: *And provided further*, That where the spirits are bottled for a certain dealer and it is desired to show the name and address of the dealer on the case in lieu of the name and location of the rectifier, such may be done if the name of the dealer is preceded by the words "Bottled for" or "Bottled expressly for," and the number of the rectifier's basic permit issued under the Federal Alcohol Administration Act regulations, together with the other required marks, excepting the name and location of the rectifier, are shown on the case.

§ 235.789 *Packages and cases of wine.* The rectifier shall place marks upon packages and cases of wine similar to the marks required by §§ 235.787 and 235.788 to be placed upon packages and cases of distilled spirits: *Provided*, That the alcoholic content of the wine will be shown in percentage by volume in lieu of the proof; and, in the case of unrectified wine, the proof gallons may be omitted.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.790 *Additional marks.* The assistant regional commissioner may, upon written application from the proprietor, authorize the affixing of bottle labels or other concise data, or symbols in lieu thereof, to the Government side of cases, to describe, for commercial identification purposes, the contents of the cases and to show the payment of State taxes thereon: *Provided*, That such additional information is set apart from and does not in any way detract from, conflict with, or obscure, any of the markings required by this part.

§ 235.791 *Illustration of marks.* The required marks, stamps, and brands will be placed on packages and cases substantially as follows:

Barrels	
Ser. No. 1	
F-16	
Whiskey	
John Doe & Co.	
Rectifier (or Distiller)	
New York, N. Y.	
R-135	
	50.00 W. G.
	90 Proof
	45.00 P. G.
[STAMP]	
Filled Jan. 5, 1955	
Cases	
Ser. No. 2	
Whiskey	
John Doe & Co.	
Rectifier (or Distiller or Bottler)	
New York, N. Y.	
R-135	
	3.00 W. G.
	90 Proof
	2.70 P. G.
Filled Jan. 5, 1955	

The location of the rectifier, or the address of the dealer for whom the spirits are bottled, may be shown by recognized abbreviations.

(68A Stat. 651; 26 U. S. C. 5282)

MANNER AND SIZE OF MARKINGS

§ 235.792 *Packages.* The required marks and brands will be plainly printed or stenciled on each package with black, durable, coloring material, in letters and figures not less than three-fourths of an inch in height, except that in the case of barrels or similar containers of less than 20 wine gallons capacity the letters and figures may be proportionate in height but in no event less than three-eighths of an inch.

(68A Stat. 651; 26 U. S. C. 5282)

§ 235.793 *Cases.* The required marks will be durably and plainly printed, stamped, or stenciled on each case in a color contrasting with the background of the case and in letters and figures not less than one-half inch in height.

MISCELLANEOUS PROVISIONS

§ 235.794 *Destruction of marks and brands.* The marks, brands, and serial numbers required by this part to be placed on barrels, casks, or similar containers or cases, shall not be removed therefrom, or obscured or obliterated, before the contents thereof have been removed; but when barrels, casks, or similar containers are emptied, all such marks, brands, and serial numbers shall be effaced and obliterated by the person removing the contents therefrom.

(68A Stat. 603; 26 U. S. C. 5010)

§ 235.795 *Trade marks.* No person shall affix or cause to be affixed to or upon any cask or package containing or intended to contain distilled spirits any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of or shall have the semblance or general appearance of any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits.

§ 235.796 *Placing of trade marks on Government head forbidden.* No marks, brands, caution notices, or other devices whatsoever will be permitted on the Government head of any package or Government side of any case, other than the stamps, labels, marks, or brands required or authorized to be affixed by law or this part.

SUBPART II—SALES OF DISTILLED SPIRITS BY RECTIFIERS

§ 235.805 *Bulk containers.* Under the regulations issued pursuant to the Federal Alcohol Administration Act (27 CFR Part 3), proprietors of rectifying plants may sell or dispose of distilled spirits in bulk, i. e., in containers having a capacity in excess of 1 gallon (a) to distillers and proprietors of internal revenue bonded warehouses, industrial alcohol plants and industrial alcohol bonded warehouses (holding a permit under the

Federal Alcohol Administration Act), including those operating taxpaid bottling houses; (b) to rectifiers; (c) to proprietors of class 8 customs bonded warehouses (imported spirits only); (d) to winemakers (brandy or alcohol) for the fortification of wine; (e) to any agency of the United States, or of any State or political subdivision thereof; (f) for export; (g) on warehouse receipts, conforming to the regulations issued under the Federal Alcohol Administration Act, for distilled spirits in internal revenue bonded warehouses; and (h) for industrial use, as follows: For experimental purposes, and in the manufacture (1) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (2) of toilet products; (3) of flavoring extracts, sirups, or food products; or (4) of scientific, chemical, mechanical, or industrial products; provided such products are unfit for beverage use. Under the regulations issued pursuant to the Federal Alcohol Administration Act rectifiers may not sell in bulk for industrial use other distilled spirits (except alcohol or neutral spirits—fruit) unless such spirits are shipped or delivered directly to the industrial user thereof.

(27 U. S. C. 206)

§ 235.806 *Retail containers.* Except as provided in § 235.805, rectifiers may sell or dispose of distilled spirits only in containers having a capacity of 1 gallon or less. All such containers having a capacity of one-half pint or more must conform to the requirements of Part 175 of this chapter.

(Sec. 6, 49 Stat. 985, 68A Stat. 639; 27 U. S. C. 206, 26 U. S. C. 5214)

§ 235.807 *Broken cases.* The rectifier may break serially numbered cases in the finished products room or the contiguous wholesale liquor dealer room when necessary for the purpose of filling orders for less than a case of particular brands or kinds of liquors, provided notation of the serial numbers of such cases is made on Form 45 or Record 52, or on a separate record with identifying data in accordance with § 235.821. Broken cases shall be kept separate from full cases, and no case shall be broken unless necessary to fill orders. Composite or partial cases shall be marked in accordance with the requirements of §§ 235.788 and 235.789, except that such cases will not be serially numbered and where the contents differ in kind or proof the words "Miscellaneous spirits" or "Assorted spirits," or a similar designation, may be substituted for a more particular description of the kind of spirits and the proof may be omitted.

SUBPART JJ—RECTIFIER'S RECORDS AND REPORTS

§ 235.815 *Monthly record, Form 45.* In addition to rendering Forms 122 and 237, as provided in subparts V and Z of this part, every rectifier shall keep a monthly record on Form 45 of all distilled spirits, wines, and other liquors received, dumped for rectification, packaged or bottled after rectification, bottled without rectification, and disposed

of. All of the information indicated by the headings of the columns and lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part, will be entered thereon. Form 45 will be kept in bound form at the rectifying plant.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.816 *Where contiguous wholesale liquor dealer room is maintained.* Where the rectifier maintains a contiguous wholesale liquor dealer room and uses it exclusively for products bottled at his rectifying plant, he shall report on Form 45 all bulk products removed from the rectifying plant and all bottled products removed from the rectifying plant and the contiguous wholesale liquor dealer room. Where the wholesale liquor dealer room is not used exclusively for products bottled at the rectifying plant, the rectifier shall report all bottled products (rectified and unrectified) removed from his rectifying plant, on Form 45, kept at such plant and shall keep at such contiguous wholesale liquor dealer room Record 52, which shall show all bottled distilled spirits products (rectified and unrectified) received and disposed of thereat, including those products transferred from his contiguous rectifying plant.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.817 *Where noncontiguous wholesale liquor dealer premises are maintained.* Every rectifier who maintains a noncontiguous wholesale liquor dealer premises shall report all bottled products (rectified and unrectified) removed from his rectifying plant on Form 45 kept at such plant. He shall keep Record 52 at such noncontiguous wholesale liquor dealer premises, which shall show all bottled distilled spirits products (rectified and unrectified) received and disposed of thereat, including products transferred from his noncontiguous rectifying plant and products received from other persons.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.818 *Record of warehouse receipts to be kept by rectifier.* Every proprietor of a rectifying plant who sells, or offers for sale, distilled spirits by warehouse receipts shall, in addition to procuring a wholesaler's basic Federal Alcohol Administration Act permit (Form 1633), keep a separate record, and render a monthly transcript, of all purchases and sales of warehouse receipts on Form 52-F. There need not be entered on Form 52-F transactions in warehouse receipts not involving the purchase or sale of distilled spirits, such as the receipt from a warehouseman of warehouse receipts covering the deposit or bottling of spirits in his warehouse or the surrender of warehouse receipts for the bottling of the spirits in bond or their transfer in bond to another warehouse. Entries on Form 52-F shall be made as indicated by the headings of the various columns and lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, and shall be verified by a written declaration that such report is made under penalties of perjury. The

provisions of § 235.820 with respect to the time of making entries, and of § 235.832 with respect to forms to be provided by users, are hereby made applicable to Form 52-F. The provisions of § 235.821 with respect to a separate record of serial numbers of cases are hereby made applicable to Form 52-F with respect to serial numbers of packages and cases purchased or sold by warehouse receipts. The monthly transcript on Form 52-F shall be forwarded to the assistant regional commissioner on or before the tenth day of the succeeding month. The physical removal of distilled spirits from the rectifying plant shall continue to be reported on Form 45 in accordance with the provisions of § 235.815. The physical receipt and disposition of distilled spirits at the contiguous wholesale liquor dealer room not used exclusively for products bottled at the rectifying plant shall continue to be reported on Record 42 in accordance with the provisions of § 235.816. The physical receipt and disposition of distilled spirits at the rectifier's noncontiguous wholesale liquor dealer premises shall continue to be reported on Record 52 in accordance with the provisions of § 235.817.

(68A Stat. 619, 652, 749; 26 U. S. C. 5114, 5285, 5555)

§ 235.819 *Place where Form 52-F shall be kept.* Every proprietor of a rectifying plant shall keep Form 52-F at the place of business where warehouse receipts are sold or offered for sale.

(68A Stat. 619, 652, 681; 26 U. S. C. 5114, 5285, 5555)

§ 235.820 *Time of making entries.* Daily entries shall be made on Form 45 and Record 52, as indicated by the headings of the various columns and lines on the form, and the instructions printed thereon or issued in respect thereto, and as required by this part, before the close of the business day next succeeding the day on which the transactions occur. Where the proprietor defers the making of the entries to the next business day, as authorized in this section, he shall keep a separate record, such as invoices, of the removals of spirits, showing the removal data required to be entered on Form 45 or Record 52, respectively, and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.821 *Separate record of serial numbers of cases.* Serial numbers of cases of spirits disposed of need not be entered on Form 45 or Record 52, provided the proprietor keeps in his place of business a separate record, approved by the assistant regional commissioner, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices

or bills. Such books, invoices, or bills shall be preserved for a period of two years and in such a manner that the required information may be ascertained readily therefrom, and during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized in this section, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the assistant regional commissioner shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority dated _____"

(68A Stat. 652; 26 U. S. C. 5285)

§ 235.822 *Miscellaneous items.* The proprietor may enter on Record 52 as one item the total quantity of different kinds of spirits made up from broken cases sold to the same person on the same day, provided such total quantity is not in excess of 10 gallons. The entry of such items shall be stated as "Miscellaneous" or "Misc." and shall show the date, the name and address of the person to whom sold, and the quantity. The total quantity of such miscellaneous spirits so disposed of during the month shall be reported as "Miscellaneous" in the monthly summary which the proprietor is required to render on Form 338; *Provided*, That the proprietor determines by actual inventory the quantity of each kind of spirits remaining on hand at the end of the month.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.823 *Where wholesaler maintains retail department.* Where a wholesale liquor dealer maintains a separate retail liquor dealer department on the same premises, he shall keep Record 52 at his wholesale liquor dealer department and enter thereon all spirits received and disposed of thereat. Distilled spirits transferred from the wholesale department to the retail department shall be reported on Record 52, part 2, as "Transferred to retail liquor dealer department." Sales of 5 wine gallons or more of distilled spirits to the same person at the same time, filled wholly or partly from the retail liquor dealer department, shall be entered on Record 52, part 2, and the quantity taken from the retail department shall be entered on Record 52, part 1, as "Transferred from the retail liquor dealer department." Where the wholesale liquor dealer sells at both wholesale and retail and does not maintain a separate retail department, all distilled spirits received and disposed of shall be entered on Record 52.

(68A Stat. 619, 652, 681; 26 U. S. C. 5114, 5285, 5555)

§ 235.824 *Reports.* Except as otherwise provided in this section, the pro-

prietor shall file, daily, full and complete transcripts of Form 45 (part 5) and Record 52 on Forms 45 (part 5), 52-A and 52-B with the assistant regional commissioner, by delivering or mailing them to such officer on the date the transactions entered therein occurred; *Provided*, That in any case in which the assistant regional commissioner shall direct, the transcripts shall be so filed with the supervisor in charge, Alcohol and Tobacco Tax, instead of with the assistant regional commissioner. The transcripts shall bear the following certification signed by the person or officer authorized to execute Form 45 or 338:

I hereby certify that these transcripts, consisting of _____ pages, disclose all the transactions which occurred during the period covered thereby, and that each entry is correct.

If in any case the assistant regional commissioner shall so authorize, the transcripts, in lieu of being filed daily, may be filed with him on or before the 10th day of the month succeeding the month in which the transactions occurred. In such event, transactions will be entered on Form 45 and Record 52 in accordance with the provisions of § 235.820. A full and complete transcript of Form 45 (except part 5 where such part is filed daily) shall be prepared and forwarded to the assistant regional commissioner on or before the 10th day of the month succeeding the month in which the transactions occurred. Where Record 52 is kept, a monthly summary report shall be prepared on Form 338, in duplicate, one copy of which will be retained on file and the original forwarded to the assistant regional commissioner on or before the 10th day of the month succeeding the month in which the transactions occurred.

REPORT OF THIRD PARTY TRANSACTIONS

§ 235.825 *Additional requirements.* The proprietor of the rectifying plant shall report, on Form 45, part 5, and when Record 52 is kept, on part 2 and on transcript, Form 52-B, the name and address of each consignee, in the column now designated "Name." In the column now designated "Address," there will be reported the name and address of the person, firm or corporation paying (by advancement or reimbursement) either tax, bottling charge, brokerage fee, handling charge, or clearance fee, indicating which are included. The heading of both columns will be amended accordingly.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.826 *Reporting of shipment or delivery of distilled spirits to third party.* Where the proprietor of a rectifying plant ships or delivers distilled spirits to a consignee on the order of another wholesale liquor dealer, detailed records of the transactions shall be kept on Form 45 by the proprietor of the rectifying plant making the shipment or delivery; on Record 52 by the wholesale liquor dealer giving the order; and on Record 52 by the consignee if he is a wholesale

liquor dealer. For example, assuming that the proprietor of rectifying plant (A) ships or delivers the distilled spirits to consignee (C) on the order of wholesaler dealer (B), entries will be made on the prescribed forms as follows:

(a) The proprietor of the rectifying plant (A) will show in his Form 45 the name and address of wholesaler dealer (B) who ordered the distilled spirits, as well as the name and address of consignee (C), the person to whom the distilled spirits are actually shipped or delivered;

(b) Wholesaler dealer (B) will show in his Record 52 that the distilled spirits were purchased from rectifier (A), giving both the name and address of (A), and will at the same time make an entry showing that the distilled spirits were shipped or delivered by (A) to consignee (C) giving the name and address of (C); and

(c) Consignee (C), if a wholesale liquor dealer, will show in his Record 52 that the distilled spirits were purchased from wholesaler dealer (B) and received by him from the proprietor of rectifying plant (A), giving name and address of both. A copy of Form 45 and transcripts of Record 52 on Forms 52-A and 52-B, required to be filed with the assistant regional commissioner, will similarly show the details of such transactions.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.827 *Similar third party transactions.* Where the proprietor of a rectifying plant keeps Record 52 and is a party to transactions similar to those described in § 235.826, he shall make similar entries of such transactions in Record 52; and the transcripts on Forms 52-A and 52-B required to be filed with the assistant regional commissioner, will likewise show the details of the transactions.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

REPORT OF RED STRIP STAMPS

§ 235.828 *Record, Part 1, Form 182.* Every rectifier who has in his possession red strip stamps will keep a record of such stamps received and used on Part 1 of Form 182. Entries will be made on Form 182 daily, as indicated by the headings of the various columns and lines on the form, and in accordance with the instructions printed thereon or issued in respect thereto, and as required by this part. The record will be kept in bound form, available for inspection by internal revenue officers.

§ 235.829 *Monthly report, Part 2, Form 182.* The rectifier shall prepare a monthly summary report on Part 2 of Form 182, in duplicate. He shall deliver Part 2 of Form 182 to the storekeeper-gauger for verification of the monthly inventories of stamps on hand. After such verification the officer will return both copies to the rectifier who will, on or before the 5th day of the month succeeding the month in which the transactions occurred, forward the original to the assistant regional commissioner and retain the remaining copy, available for inspection by internal revenue officers.

EXECUTION AND DISPOSITION OF RECORDS AND REPORTS

§ 235.830 *Execution of reports.* Reports on Forms 45, 182, and 338 must be signed in the same manner as the rectifier's notice, Form 27-B, except that in the case of a corporation the fixing of the corporate seal will not be required. Each report shall be signed by the proprietor, or his authorized agent at the rectifying plant or wholesale liquor dealer premises, as the case may be. Immediately above the signature there will appear the following statement: "I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct." Where Form 45, 182, or Form 338, is signed by an agent, proper power of attorney authorizing the agent to execute the reports for the proprietor must be filed with the assistant regional commissioner. In the case of Forms 45 and 182 the power of attorney will be filed in duplicate.

(68A Stat. 652, 681, 749; 26 U. S. C. 5285, 5555, 6065)

§ 235.831 *Preservation of records.* Records kept on Forms 45, 182, 2057, and Record 52 shall be preserved for a period of two years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.832 *Forms to be provided by users.* Record 52 and Forms 45, 52-A, 52-B, 52-F, 122, 230, 237, and 338 will be provided by users at their own expense but must be in the form prescribed by the Director, Alcohol and Tobacco Tax Division: *Provided*, That, with the approval of the Director, Alcohol and Tobacco Tax Division, the forms may be modified to adapt their use to tabulating or other mechanical equipment: *And provided further*, That where the form is printed in book form, including loose-leaf books, the instructions may be printed on the cover or the flyleaf of the book instead of on the individual form.

(68A Stat. 652, 681; 26 U. S. C. 5285, 5555)

§ 235.833 *Filing of forms.* Rectifiers shall maintain separate files for Forms 122, 230 and Form 230 or Form 237 attached thereto in the case of spirits received by pipeline or tank car or tank truck from another rectifying plant), 237, 1440, and 1520. They shall file Forms 230, and 237 in serial order and all other forms in chronological order, in their respective files and shall preserve them for a period of two years at the rectifying plant, available for inspection by internal revenue officers.

SUBPART KK—OPERATING UNDER A NEW NAME OR RECTIFYING AND BOTTLING UNDER DIFFERENT TRADE NAMES

§ 235.845 *Qualification of proprietor.* Whenever the proprietor of a rectifying plant desires to change the individual or corporate name, or the trade name or style, in which the rectifying plant is operated, he must, except as provided

in §§ 235.846 and 235.847, secure approval of such change in the manner prescribed in §§ 235.230 through 235.246 prior to the commencement of operations.

§ 235.846 *Trade name rectification.* Where the rectifier desires to rectify particular spirits under a trade name or style other than the name in which the rectifying plant is qualified and operated, and such trade name or style has been specified on an approved Form 27-B and on the rectifier's Federal Alcohol Administration Act permit, he may rectify such spirits under such approved trade name without filing an amended notice on Form 27-B or changing the name under which the rectifying plant is then qualified and operated. The rectifier shall indicate in part 2 of Form 122, covering the batch record of such particular spirits, the trade name or style under which they were rectified. When the rectified spirits are transferred to packages or to a bottling tank for bottling the rectifier shall state on part 1 of Form 237 the trade name or style under which the spirits were rectified. The spirits so rectified may be labeled "blended by," "made by," "prepared by," "manufactured by," or "produced by" (whichever may be appropriate to the act of rectification involved), followed by the trade name or style under which the spirits were rectified, and the address (or addresses) of the rectifier, in accordance with Regulations 5 (27 CFR Part 5) issued under the Federal Alcohol Administration Act.

§ 235.847 *Trade name bottling.* Where the rectifier desires to bottle particular spirits under a trade name or style other than the name in which the rectifying plant is qualified and operated, or the name under which the spirits were rectified, and such trade name or style has been specified on an approved Form 27-B and on the rectifier's Federal Alcohol Administration Act permit, and he has secured certificates of label approval (Form 1649) or certificates of exemption from label approval (Form 1650) for the labeling of spirits under such trade name or style, he shall specify on Form 230 or Form 237, as the case may be, his intent to bottle and label the particular spirits covered by the form under such name or style. He may so bottle and label the particular spirits covered by Form 230 or Form 237, as the case may be, without filing an amended notice on Form 27-B or changing the name under which the rectifying plant is then qualified and operated.

§ 235.848 *Spirits in process of rectification or bottling.* Whenever a rectifier desires to operate his rectifying plant under a new individual or corporate name, or a trade name or style other than the trade name or style under which he is then operating, and has complied with the provisions of § 235.845, he will not be required to complete the rectification of spirits or wines dumped for the purpose, or the bottling or packaging of spirits or wines covered by approved Forms 230 or 237, before commencing business under the new individual or corporate name or under such other trade name or style.

§ 235.849 *Outstanding Forms 230 and 237.* When a change in the individual or corporate name, or in the trade name or style, takes place at a rectifying plant the proprietor shall enter on both copies of each outstanding Form 230 and on all copies of each outstanding Form 237 the total quantity of spirits bottled under each prior to the effective date of the change, giving all the information required by the form. Each of such entries shall be followed by a statement, dated and signed by the rectifier, showing that the remainder of the spirits or wines described on the form are to be bottled under the new name. Upon completion of the bottling the proprietor will complete the execution of the forms under the new name, and, will dispose of them in the manner prescribed in Subparts Z and EE of this part. If Form 237 covers spirits to be removed in barrels or similar packages the form will be completed in the name under which the rectified spirits stamps were applied for and issued.

§ 235.850 *Marking packages and cases.* The packages or cases will be marked under the individual or corporate name or trade name or style in which the rectifying plant is being operated: *Provided*, That where spirits are rectified pursuant to § 235.846, or are bottled pursuant to § 235.847, under a trade name other than that in which the rectifying plant is qualified and operated, such trade name may be marked on the packages or cases as the name of the rectifier or bottler, as the case may be, in lieu of the name in which the rectifying plant is being operated: *Provided further*, That where such spirits are bottled for a certain dealer they may be marked in accordance with § 235.788. The packages and cases shall be further marked in accordance with §§ 235.787 and 235.788.

§ 235.851 *Records.* Separate records on Form 45 and Form 182, will not be required for operations under a new individual or corporate name or under each trade name or style. The rectifier shall, however, note on Form 45 and Form 182 the individual or corporate name or the trade names or styles under which operations were conducted during the month, and the dates of operation under each. In the case of spirits rectified pursuant to the provisions of § 235.846, or bottled pursuant to § 235.847, the proprietor will show on Form 45 the trade name under which the particular spirits were rectified or bottled.

(68A Stat. 652; 26 U. S. C. 5285)

SUBPART II—CHANGE OF PROPRIETORSHIP

§ 235.855 *Completion of operations required.* When a succession or actual change in the proprietorship of a rectifying plant takes place other than a change brought about by operation of law, as by the appointment of an administrator, executor, assignee, receiver, trustee, or other fiduciary, the business of rectification, the bottling of liquors rectified, and the bottling of spirits and wines without rectification must, except as provided in this subpart, be completely finished by the person or persons who have been carrying on the business

and all spirits and wines on hand removed from the premises before the business shall be undertaken or begun by the succeeding proprietor. The successor of a rectifier shall not commence operations until all documents required for his qualification as such have been approved by the assistant regional commissioner.

§ 235.856 *Transfer of spirits to successor.* The outgoing rectifier may transfer to his successor all spirits on hand, including those in the process of rectification: *Provided*, That where any spirits to be so transferred have been subjected to a process of rectification, all taxes due thereon shall be paid by the outgoing rectifier before transfer to the successor, irrespective of whether or not the process of rectification has been completed: *And provided further*, That the notice, bond, and other qualifying documents of the successor have been approved by the assistant regional commissioner to take effect on the day next succeeding that at the close of which the transfer is to be made. The required qualifying documents of the successor should be submitted to the assistant regional commissioner in sufficient time to permit approval for the date desired.

§ 235.857 *Gauging of partially rectified products.* All partially rectified products to be transferred to the successor shall be drawn from the processing tanks and receptacles into packages or bottling tanks, gauged, and retained therein pending taxpayment by the outgoing rectifier, except that partially rectified spirits in gaugeable packages may be gauged and retained therein pending taxpayment and transfer to the successor, and partially rectified products which are to be further rectified by the successor may be run into a weighing tank, or, if no weighing tank has been provided, into a bottling tank and gauged, and then returned to processing tanks or receptacles and retained therein pending taxpayment and transfer to the successor. A separate Form 237 shall be prepared in quadruplicate for each tank, and in triplicate for each lot of packages containing the same kind of product in the same stage of rectification.

§ 235.858 *Determining tax liability of partially rectified products.* The tax liability of partially rectified products to be transferred to the successor shall be determined in accordance with the provisions of § 235.593, pertaining to the taxpayment of partially rectified products for removal from the plant. If the partially rectified products are such as are subject to tax under section 5022 or section 5041, I. R. C., the outgoing rectifier shall, as provided by said § 235.593, append to each copy of Form 237, before the same is submitted to the internal revenue officer for certification, and by him submitted to the assistant regional commissioner for approval, a precise statement showing the extent to which the products have been rectified and their present character. The assistant regional commissioner will specify on the form the tax or taxes due, and will return all copies to the rectifier.

§ 235.859 *Taxpayment of partially rectified products.* Upon receipt from the assistant regional commissioner of Form 237, with the tax or taxes due duly specified, the outgoing rectifier shall, in the case of all partially rectified products in packages, forward all copies of the form to the district director with remittance for the tax or taxes due, if any. The district director will execute the certificate of taxpayment, in all cases where remittance is received, retain one copy, and return the remaining copies to the rectifier, together with the required number of the appropriate rectified spirits stamps where packages are listed on the form. The outgoing rectifier will affix the rectified spirits stamps to the packages for which they were issued, and will cancel such stamps and mark and brand the packages, as provided in Subpart FF and Subpart HH of this part. In the case of partially rectified products in tanks, the rectification tax of 30 cents per proof gallon shall be paid in accordance with § 235.585. If the Form 237 covers a partially rectified product in a tank, one copy thereof will be attached to the tank pending transfer to the successor, and the original copy with the canceled stamps attached will be disposed of as provided in § 235.586. If the partially rectified product is subject to tax under section 5022 or section 5041, I. R. C., rectified spirits stamps representing such tax will be canceled and attached to Form 237 in the manner provided by §§ 235.585 and 235.586.

(68A Stat. 614, 620, 651; 26 U. S. C. 5061, 5115, 5282)

§ 235.860 *Completion and disposition of Form 237.* When the partially rectified products in packages have been taxpaid (if subject to tax) and removed to the finished products room, and such products in tanks have been taxpaid (if subject to tax) and transferred to the successor, the outgoing rectifier shall make appropriate notation of the disposition of the products on Form 237, and will retain one copy of the form and forward the original copy to the assistant regional commissioner.

(68A Stat. 651; 26 U. S. C. 5281)

§ 235.861 *Rectification of partially rectified products by successor.* When rectified products contained in tanks are to be further rectified by the successor, he shall, immediately upon receipt thereof from the outgoing rectifier, prepare Form 122 to show a constructive dumping of the products by him for rectification. The form will be prepared in the manner prescribed by Subpart V of this part for the regular dumping of spirits for rectification, except that the copy of Form 237 attached to the tank by the outgoing rectifier will be removed and attached to the assistant regional commissioner's copy of Form 122 as evidence of the taxpaid character of the product, in lieu of the cut-out portions of the stamps required to be attached to the form when packages are dumped. Upon completion of the process of rectification, pursuant to an approved formula, the successor shall prepare and submit Form 237 and pay all taxes due on the product in accordance with the

procedure prescribed in Subpart Z of this part. Partially rectified products received from the outgoing rectifier in packages may be returned to the rectifying room and dumped for further rectification, pursuant to Form 122, provided appropriate entries are made in Form 45 to show a constructive transfer of the products from the finished products room to the receiving room.

§ 235.862 Bottling of partially rectified products by successor. Where partially rectified products in bottling tanks are transferred to the successor and such products are to be bottled without further rectification, the successor shall prepare Form 230 in the manner prescribed by Subpart EE of this part, except that the copy of Form 237 attached to the bottling tank by the outgoing rectifier will be removed and attached to the assistant regional commissioner's copy of Form 230 as evidence of the tax-paid character of the product in lieu of the cut-out portions of stamps required to be attached to the form when packages are dumped.

§ 235.863 Taxpayment of completely rectified products. Where completely rectified products are to be transferred to the successor, such products shall be drawn into packages or run into bottling tanks and gauged, Form 237 shall be prepared and submitted, and all taxes due on such products shall be paid by the outgoing rectifier, in accordance with the procedure prescribed in Subpart Z of this part. If completely rectified products in bottling tanks are to be bottled by the successor, the same procedure shall be followed as in the case of the bottling of partially rectified products contained in such tanks.

§ 235.864 Bottling of unrectified products by successor. Where there is a change of proprietorship in a rectifying plant, and products to be bottled without rectification, covered by Form 230, are to be transferred to the successor prior to completion of bottling, the outgoing rectifier shall enter on all copies of each such form the total quantity of products bottled under each by him prior to the effective date of transfer, giving all the information required by the form. Each of such entries shall be followed by a statement dated and signed by the outgoing rectifier showing that the remainder of the products described on the form are to be transferred to the successor. The outgoing rectifier will complete the form, retain one copy, and forward one copy to the assistant regional commissioner. When the transfer has been effected, the successor may bottle such products without rectification pursuant to Form 230 filed by him. The Form 230 of the successor should contain a reference to the Form 230 of the predecessor to identify the products.

§ 235.865 Disposition of red strip stamps. The outgoing rectifier may not transfer any strip stamps to his successor. Where the change of proprietorship of the plant is to be of a temporary nature, any strip stamps on hand belonging to the outgoing proprietor may be retained pending the qualification and resumption of operations by such pro-

prietor. The rectifier will submit a monthly report on part 2 of Form 182 of such stamps.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.866 Disposition of rectified spirits stamps. The outgoing rectifier may not transfer any rectified spirits stamps to his successor, nor may such stamps be otherwise transferred except as provided by § 235.720. Where the change of proprietorship of the plant is to be of a temporary nature, any rectified spirits stamps on hand will be retained in the custody of the outgoing proprietor (the owner of the stamps) and proper report will be rendered on Form 45. The rectifier will submit a monthly report of such stamps due at the end of any monthly period during the period of temporary discontinuance in accordance with § 235.723 during such period of temporary discontinuance.

(68A Stat. 829; 26 U. S. C. 6801)

§ 235.867 Records and reports. Where there is a change in proprietorship otherwise than by operation of law, the outgoing rectifier shall make appropriate entries on Form 45 covering all spirits transferred to his successor, who shall in turn enter such items on his Form 45 as received from his predecessor.

§ 235.868 Succession by fiduciary. Where a change of proprietorship is brought about by operation of law, the administrator, executor, assignee, receiver, trustee, or other fiduciary may not continue the business until the required qualifying documents have been filed and approved. In the case of such change, the fiduciary shall make appropriate notation of his succession on Form 45 and on all copies of each outstanding Form 230 and Form 237, and upon completion of the bottling of spirits covered by Form 230 or Form 237, he shall complete the execution of the forms and dispose of the same as provided in Subparts Z and EE of this part. The fiduciary will make similar notation of such succession on Form 182.

SUBPART MM—DISCONTINUANCE OF OPERATIONS

§ 235.880 Disposition of spirits. Upon permanent discontinuance of business, and prior to the filing of notice thereof on Form 27-B (as prescribed in § 235.884, all spirits on hand must have been lawfully removed from the premises. Persons to whom such spirits are sold or delivered must be qualified to receive the same.

§ 235.881 Disposition of indicia bottles. If there are any indicia bottles on hand, the same will be inventoried by the proprietor and the inventory verified by the storekeeper-gauger or other officer designated for the purpose by the assistant regional commissioner. The disposition of such bottles will be in accordance with the procedure prescribed in Part 175 of this chapter.

§ 235.882 Disposition of red strip stamps. All unused red strip stamps, if any, belonging to the proprietor at the time of permanent discontinuance of business will be inventoried by the pro-

prietor by denomination, serial number, and quantity, and the inventory will be verified by the storekeeper-gauger or other officer designated by the assistant regional commissioner to perform such duty. Stamps which have been cut shall be destroyed under the supervision of an internal revenue officer. Stamps which have not been cut will be disposed of in accordance with instructions from the assistant regional commissioner.

(68A Stat. 602; 26 U. S. C. 5008)

§ 235.883 Disposition of rectified spirits stamps. All of the rectified spirits stamps, if any, belonging to the proprietor at the time of permanent discontinuance of business will be inventoried by denomination by the proprietor, and the inventory verified by the storekeeper-gauger, after which the same may be disposed of and an account made in accordance with §§ 235.720 through 235.723.

§ 235.884 Notice, Form 27-B. When all spirits, indicia bottles, and red strip stamps have been lawfully disposed of, the proprietor shall file Form 27-B, in triplicate, with the assistant regional commissioner, stating the purpose of the filing thereof to be "Permanent discontinuance of business."

SUBPART NN—MANUFACTURE, TAXPAYMENT, REMOVAL, AND REGISTRATION OF STILLS AND WORMS

§ 235.890 General. Whenever rectifiers manufacture or reconstruct stills or worms, or set up, sell, or remove stills or distilling apparatus, they must comply with Part 196 of this chapter.

(68A Stat. 628; 26 U. S. C. 5174)

§ 235.891 Registry on Form 26. Every person having in his possession or custody or under his control any still or distilling apparatus that is set up and intended to be used for the distillation, redistillation, or recovery of spirits, must register the same on Form 26, in triplicate, with the assistant regional commissioner for the region in which it is set up. Stills to be used for the rectification of any type of distilled spirits may be registered for "Rectification of distilled spirits," and the specific type need not be shown. Thereafter, when another type of distilled spirits is to be rectified, the still need not be reregistered. The temporary suspension of a rectifying plant will not necessitate reregistration of the stills. Furthermore, the operation of a rectifying plant by alternating proprietors, where no actual change in ownership occurs, will not require reregistration of the stills by the proprietors. Where there is a change in location or use, or an actual change in ownership of a still, the still must be registered to reflect the change. The assistant regional commissioner will, upon approving the registration of a still on Form 26, return one copy of the approved Form 26 to the rectifier to be kept on the premises available for inspection by internal revenue officers.

SUBPART OO—LOCKS AND SEALS

§ 235.900 Furnished by Government. The assistant regional commissioner will furnish, at the expense of the United

States, all Government locks and seals required to be used at rectifying plants.

§ 235.901 Where locks are required. Government locks are required upon the door of the Government room, vault or cabinet, upon the entrance door of the wine bottling and export storage rooms, if any; upon the manheads and inlets of storage tanks and receiving tanks; upon the manheads, inlets, and outlets of bottling tanks (except where the bottling is pursuant to Form 230); upon the valves in pipelines which convey spirits from rectifying stills to receiving tanks where the pipelines are equipped for refluxing the spirits to the stills or for by-passing the berry basket in the case of gin stills; upon valves in pipelines which convey spirits into the rectifying plant from contiguous premises if such pipelines are not locked in the contiguous premises; and upon such other valves, stopcocks, and openings in equipment and apparatus as are required by this part or deemed necessary by the assistant regional commissioner to be secured with Government locks.

§ 235.902 Seal locks. Seal locks will be used on the door of the Government room, vault or cabinet; on the entrance door of the export storage room, if any; and on such other places where the use of seal locks is required by this part or deemed necessary by the assistant regional commissioner.

§ 235.903 Plain locks. Plain locks will be used at all other places in the rectifying plant where locks are required by this part.

§ 235.904 Breaking of sealed connections forbidden. Sealed connections must not be broken by the rectifier except as authorized by the storekeeper-gauger in charge or the assistant regional commissioner.

SUBPART PP—MISCELLANEOUS PROVISIONS

OFFICER'S RIGHT OF ENTRY AND EXAMINATION

§ 235.910 Authority to enter and inspect. Internal revenue officers have authority under the law to inspect at any reasonable hour the records, liquors, and premises of rectifiers to determine that all provisions of the internal revenue laws and the regulations promulgated thereunder are being complied with. Officers desiring to make inspections will identify themselves by exhibiting their credentials. Any denial of or interference with such inspection by the rectifier, his agents or employees, is a violation of law and will be reported as such for appropriate action.

(68A Stat. 636, 652; 26 U. S. C. 5196, 5283)

§ 235.911 Authority to break up grounds or walls. Under the law, any internal revenue officer and any persons acting in his aid may break up the ground on any part of the premises of a rectifier or any ground adjoining or near any such premises, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil, and upon finding any pipe or conveyance leading from or to such premises

to break up any ground, house, wall, or other place through or into which such pipe or conveyance leads, and to break or cut away such pipe or other conveyance. Before taking action under the law, the investigating officer should consult with his superior officer or the assistant regional commissioner, unless the circumstances are such as to require immediate action.

(68A Stat. 652; 26 U. S. C. 5283)

§ 235.912 Rectifiers to furnish assistance. Under the law, on demand of any internal revenue officer, every rectifier shall furnish convenient ladders to enable the officer to examine any vessel or utensil in his rectifying plant, and shall furnish all assistance, lights, tools, or other things necessary for inspecting the premises and apparatus, and shall open all doors, boxes, packages, and all casks, barrels, and other vessels not under the control of the storekeeper-gauger assigned to the plant.

(68A Stat. 652; 26 U. S. C. 5283)

VARIATIONS FROM REQUIREMENTS

§ 235.913 Exceptions to construction and equipment requirements. The Director, Alcohol and Tobacco Tax Division, may approve details of construction and equipment in lieu of those specified in this part where it is shown that it is impracticable to conform to the prescribed specifications, and the proposed construction and equipment will afford as much or more security and protection to the revenue as is intended by the specifications prescribed in this part and where such variations will not be contrary to any provision of law. Where it is proposed to substitute construction and equipment for that for which specifications are prescribed, prior approval must be obtained in accordance with the provisions of § 235.915. Rectifying plants heretofore established may continue to operate if the present construction and equipment afford adequate security and protection to the revenue. The assistant regional commissioner may at any time require the proprietor to make changes in construction and equipment conforming to this part, if deemed necessary to protect the revenue.

(68A Stat. 660; 26 U. S. C. 5552)

§ 235.914 Exceptions to methods of operation. The Director, Alcohol and Tobacco Tax Division, may, in case of emergency, approve methods of operation other than those provided for by this part, where it is shown that variations from the requirements are necessary, will not hinder the effective administration of this part, will not jeopardize the revenue, and where such variations are not contrary to any provision of law. Where it is proposed to employ methods of operation other than those provided for by this part, prior approval must be obtained in accordance with the provisions of § 235.915.

§ 235.915 Application. A proprietor who proposes to employ methods of operation or construction, or to install equipment, other than as provided in this part, shall submit a letter-head ap-

plication so to do, in triplicate, to the assistant regional commissioner. Such application shall describe the proposed variations and state the need therefor. Where variations in construction and equipment cannot be adequately described in the application, drawings, or photographs shall also be submitted. The assistant regional commissioner will make such inquiry as is necessary to determine the necessity for the variations, and whether approval thereof will hinder the effective administration of this part or result in jeopardy to the revenue. On completion of the inquiry, the assistant regional commissioner will forward two copies of the application to the Director, Alcohol and Tobacco Tax Division, together with a report of his findings and his recommendation.

[F. R. Doc. 54-9869; Filed, Dec. 10, 1954; 11:23 a. m.]

[26 CFR (1954) Part 301]

REGULATIONS RELATING TO ASSESSMENT, COLLECTION, ABATEMENT, CREDIT, AND REFUND, OF INTERNAL REVENUE TAXES UNDER SUBTITLE F OF THE INTERNAL REVENUE CODE OF 1954

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. These proposed regulations relate to the administrative provisions under chapter 63, chapter 64 (except section 6316, the regulations under which will be issued at a later date), and chapter 65 of Subtitle F of the Internal Revenue Code of 1954. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Washington 25, D. C., within the period of 15 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

Although 30 days are ordinarily provided for furnishing views, data, and arguments pertaining to proposed rule making, a period of 15 days is provided with respect to these proposed regulations in order to make possible more expeditious promulgation of the regulations under these chapters which generally become effective on January 1, 1955.

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

PART 301—PROCEDURE AND ADMINISTRATION

ASSESSMENT, COLLECTION, ABATEMENT, CREDIT, AND REFUND

In order to provide regulations under chapter 63, relating to assessment, chapter 64 (except section 6316, the regulations under which will be prescribed at a

later date), relating to collection, and chapter 65, relating to abatement, credit, and refund, of the Internal Revenue Code of 1954, the following regulations are prescribed:

ASSESSMENTS

IN GENERAL

- Sec.
301.6201 Statutory provisions; assessment authority.
301.6201-1 Assessment authority.
301.6202 Statutory provisions; establishment by regulations of mode or time of assessment.
301.6203 Statutory provisions; method of assessment.
301.6203-1 Method of assessment.
301.6204 Statutory provisions; supplemental assessments.
301.6204-1 Supplemental assessment.
301.6205 Statutory provisions; special rules applicable to certain employment taxes.
301.6205-1 Special rules applicable to certain employment taxes.
301.6206 Statutory provisions; cross references.

DEFICIENCY PROCEDURES

- 301.6211 Statutory provisions; definition of a deficiency.
301.6211-1 Deficiency defined.
301.6212 Statutory provisions; notice of deficiency.
301.6212-1 Notice of deficiency.
301.6213 Statutory provisions; restrictions applicable to deficiencies; petition to Tax Court.
301.6213-1 Restrictions applicable to deficiencies; petition to Tax Court.
301.6214 Statutory provisions; determinations by Tax Court.
301.6215 Statutory provisions; assessment of deficiency found by Tax Court.
301.6215-1 Assessment of deficiency found by Tax Court.
301.6216 Statutory provisions; cross references.

COLLECTION

GENERAL PROVISIONS

- 301.6301 Statutory provisions; collection authority.
301.6301-1 Collection authority.
301.6302 Statutory provisions; mode or time of collection.
301.6302-1 Use of Federal reserve banks and authorized commercial banks in connection with the payment of certain employment and excise taxes.
301.6303 Statutory provisions; notice and demand for tax.
301.6303-1 Notice and demand for tax.
301.6304 Statutory provisions; collection under the Tariff Act.

RECEIPT OF PAYMENT

- 301.6311 Statutory provisions; payment by check or money order.
301.6311-1 Payment by check or money order.
301.6312 Statutory provisions; payment by United States notes and certificates of indebtedness.
301.6312-1 Treasury certificates of indebtedness, Treasury notes, and Treasury bills acceptable in payment of internal revenue taxes or stamps.
301.6312-2 Certain Treasury savings notes acceptable in payment of certain internal revenue taxes.
301.6313 Statutory provisions; fractional parts of a cent.
301.6313-1 Fractional parts of a cent.

Sec.

- 301.6314 Statutory provisions; receipt for taxes.
301.6314-1 Receipt for taxes.
301.6315 Statutory provisions; payments of estimated income tax.
301.6315-1 Payments of estimated income tax.
301.6316 Statutory provisions; payment by foreign currency.

LIEN FOR TAXES

- 301.6321 Statutory provisions; lien for taxes.
301.6321-1 Lien for taxes.
301.6322 Statutory provisions; period of lien.
301.6323 Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.
301.6323-1 Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.
301.6324 Statutory provisions; special liens for estate and gift taxes.
301.6324-1 Special liens for estate and gift taxes; personal liability of transferees and others.
301.6325 Statutory provisions; release of lien or partial discharge of property.
301.6325-1 Release of lien or partial discharge of property.
301.6326 Statutory provisions; cross references.

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

- 301.6331 Statutory provisions; levy and distraint.
301.6331-1 Levy and distraint.
301.6332 Statutory provisions; surrender of property subject to levy.
301.6332-1 Surrender of property subject to levy.
301.6333 Statutory provisions; production of books.
301.6333-1 Production of books.
301.6334 Statutory provisions; property exempt from levy.
301.6334-1 Property exempt from levy.
301.6335 Statutory provisions; sale of seized property.
301.6335-1 Sale of seized property.
301.6336 Statutory provisions; sale of perishable goods.
301.6336-1 Sale of perishable goods.
301.6337 Statutory provisions; redemption of property.
301.6337-1 Redemption of property.
301.6338 Statutory provisions; certificate of sale; deed of real property.
301.6338-1 Certificate of sale; deed of real property.
301.6339 Statutory provisions; legal effect of certificate of sale of personal property and deed of real property.
301.6339-1 Legal effect of certificate of sale of personal property and deed of real property.

- 301.6340 Statutory provisions; records of sale.
301.6340-1 Records of sale.

- 301.6341 Statutory provisions; expense of levy and sale.
301.6341-1 Expense of levy and sale.
301.6342 Statutory provisions; application of proceeds of levy.
301.6342-1 Application of proceeds of levy.
301.6343 Statutory provisions; authority to release levy.
301.6343-1 Authority to release levy.
301.6344 Statutory provisions; cross references.

ABATEMENTS, CREDITS, AND REFUNDS

PROCEDURE IN GENERAL

- 301.6401 Statutory provisions; amounts treated as overpayments.

Sec.

- 301.6401-1 Amounts treated as overpayments.
301.6402 Statutory provisions; authority to make credits or refunds.
301.6402-1 Authority to make credits or refunds.
301.6402-2 Claims for credit or refund.
301.6402-3 Special rules applicable to income tax.
301.6402-4 Payments in excess of amounts shown on return.
301.6402-5 Claim for payment of judgment obtained against district director.
301.6402-6 Claim for payment of judgment obtained in United States district court against the United States.
301.6402-7 Claim for payment of judgment obtained in the Court of Claims against the United States.
301.6403 Statutory provisions; overpayment of installment.
301.6403-1 Overpayment of installment.
301.6404 Statutory provisions; abatements.
301.6404-1 Abatements.
301.6405 Statutory provisions; reports of refunds and credits.
301.6405-1 Reports of refunds and credits.
301.6406 Statutory provisions; prohibition of administrative review of decisions.
301.6407 Statutory provisions; date of allowance of refund or credit.
301.6407-1 Date of allowance of refund or credit.

RULES OF SPECIAL APPLICATION

- 301.6411 Statutory provisions; tentative carryback adjustments.
301.6411-1 Tentative carryback adjustments.
301.6412 Statutory provisions; floor stocks refunds.
301.6412-1 Floor stocks refunds.
301.6413 Statutory provisions; special rules applicable to certain employment taxes.
301.6413-1 Special rules applicable to certain employment taxes.
301.6414 Statutory provisions; income tax withheld.
301.6414-1 Income tax withheld.
301.6415 Statutory provisions; credits or refunds to persons who collected certain taxes.
301.6415-1 Credits or refunds to persons who collected certain taxes.
301.6416 Statutory provisions; certain taxes on sales and services.
301.6416-1 Certain taxes on sales and services.
301.6417 Statutory provisions; coconut and palm oil.
301.6417-1 Coconut and palm oil.
301.6418 Statutory provisions; sugar.
301.6418-1 Sugar.
301.6419 Statutory provisions; excise tax on wagering.
301.6419-1 Excise tax on wagering.
301.6420 Statutory provisions; cross references.

EFFECTIVE DATE AND RELATED PROVISIONS

- 301.7851 Statutory provisions; applicability of revenue laws.

AUTHORITY: §§ 301.6201 to 301.7851 issued under sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

ASSESSMENT

IN GENERAL

§ 301.6201 Statutory provisions; assessment authority.

SEC. 6201. ASSESSMENT AUTHORITY.

(a) Authority of Secretary or delegate. The Secretary or his delegate is authorized

and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) *Taxes shown on return.* The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) *Unpaid taxes payable by stamp.*

(A) *Omitted stamps.* Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary or his delegate determines to be liable for such tax.

(B) *Check or money order not duly paid.* In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) *Erroneous income tax prepayment credits.* If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) *Estimated income tax.* No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

(c) *Compensation of child.* Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73 (a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) *Deficiency proceedings.* For special rules applicable to deficiencies of income, estate, and gift taxes, see subchapter B.

§ 301.6201-1 *Assessment authority—*

(a) *In general.* The district director is authorized and required to make all inquiries necessary to the determinations and assessments of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. He is further authorized and required to make the determinations and the assessments of such taxes. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the district director to make assessments includes the following:

(1) *Taxes shown on return.* The district director shall assess all taxes determined by the taxpayer or by the district director and disclosed on a return or list.

(2) *Unpaid taxes payable by stamp.* If without the use of the proper stamp:

(a) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(b) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs;

the district director, upon such information as he can obtain, must estimate the amount of the tax which has not been paid and must make assessment therefor upon the person the district director determines to be liable for the tax. However, the district director may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(ii) If a taxpayer gives a check or money order as payment for stamps but the check or money order is not paid upon presentment, then the district director shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the district director.

(3) *Erroneous income tax prepayment credits.* If the amount of income tax withheld or the amount of estimated income tax paid is overstated by a taxpayer on a return or on a claim for refund, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund shall be assessed by the district director in the same manner as in the case of a mathematical error on the return. See section 6213 (b) (1), relating to exceptions to restrictions on assessment.

(b) *Estimated income tax.* The district director shall not assess any amount of estimated income tax required to be paid under section 6153 or 6154 which is unpaid.

(c) *Compensation of child.* Any income tax assessed against a child, to the extent of the amount attributable to income included in the gross income of the child solely by reason of section 73 (a) or the corresponding provision of prior law, if not paid by the child, shall, for the purposes of the income tax imposed by chapter 1 (or the corresponding provisions of prior law), be considered as having also been properly assessed against the parent. In any case in which the earnings of the child are included in the gross income of the child solely by reason of section 73 (a) or the corresponding provision of prior law, the parent's liability is an amount equal to the amount by which the tax assessed against the child (and not paid by him) has been increased by reason of the inclusion of such earnings in the gross income of the child. Thus, if for the calendar year 1954 the child has income of \$1,000 from investments and of \$3,000 for services rendered, and the latter amount is includible in the gross income of the child under section 73 (a) and the child has no wife or dependents, the tax liability determined under section 3 is \$625. If the child had only the investment income of \$1,000, his tax liability would be \$62. If the tax of \$625 is assessed against the child, the difference between \$625 and \$62, or \$563, is the amount of such tax which is considered to have been properly assessed against the parent, if not paid by the child.

§ 301.6202 *Statutory provisions; establishment by regulations of mode or time of assessment.*

SEC. 6202. ESTABLISHMENT BY REGULATIONS OF MODE OR TIME OF ASSESSMENT.

If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary or his delegate may establish the same by regulations.

§ 301.6203 *Statutory provisions; method of assessment.*

SEC. 6203. METHOD OF ASSESSMENT.

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary or his delegate in accordance with rules or regulations prescribed by the Secretary or his delegate. Upon request of the taxpayer, the Secretary or his delegate shall furnish the taxpayer a copy of the record of the assessment.

§ 301.6203-1 *Method of assessment.*

The district director shall appoint one or more assessment officers, and the assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period if applicable, and the amount of the assessment. The amount of the assessment shall in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment the district director shall furnish the taxpayer a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

§ 301.6204 *Statutory provisions; supplemental assessments.*

SEC. 6204. SUPPLEMENTAL ASSESSMENTS.

(a) *General rule.* The Secretary or his delegate may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) *Restrictions on assessment.* For restrictions on assessment of deficiency in income, estate, and gift taxes, see section 6213.

§ 301.6204-1 *Supplemental assessment.* If any assessment is incomplete or incorrect in any material respect, the district director, subject to the restrictions with respect to the assessment of deficiencies in income, estate, and gift taxes, and subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

§ 301.6205 *Statutory provisions; special rules applicable to certain employment taxes.*

SEC. 6205. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) *Adjustment of tax.*

(1) *General rule.* If less than the correct amount of tax imposed by section 3101,

3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 301.6205-1 *Special rules applicable to certain employment taxes.* For regulations under this section, see the Employment Tax Regulations (Part 31 of this chapter).

§ 301.6206 *Statutory provisions; cross references.*

SEC. 6206. CROSS REFERENCES.

(1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment in case of sale or removal of tobacco, snuff, cigars, and cigarettes without the use of proper stamps, see section 5703 (d).

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006 (c).

(6) For assessment in case of certain spirits subject to excessive leakage, see section 5006 (b).

(7) For assessment of deficiencies in production of distilled spirits, see section 5007 (e) (1).

(8) For period of limitation upon assessment, see chapter 66.

(9) For assessment under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501 (b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

DEFICIENCY PROCEDURES

§ 301.6211 *Statutory provisions; definition of a deficiency.*

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) *In general.* For purposes of this title in the case of income, estate, and gift taxes, imposed by subtitles A and B, the term "deficiency" means the amount by which the tax imposed by subtitles A or B exceeds the excess of:

(1) The sum of:

(A) The amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over;

(2) the amount of rebates, as defined in subsection (b) (2), made.

(b) *Rules for application of subsection (a).* For purposes of this section:

(1) The tax imposed by chapter 1 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitles A or B was less than the excess of the amount specified in subsection (a) (1) over the rebates previously made.

(3) The computation by the Secretary or his delegate, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

§ 301.6211-1 *Deficiency defined.* (a) In the case of the income tax imposed by subtitle A, the estate tax imposed by chapter 11, or the gift tax imposed by chapter 12, the term "deficiency" means the excess of the tax (income, estate, or gift tax, as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency; but such sum shall first be reduced by the amount of rebates made. If no return is made, or if the return (except a return of income tax on Form 1040A pursuant to section 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero. Accordingly, in any such case, if no deficiencies with respect to the tax have been assessed, or collected without assessment, and no rebates with respect to the tax have been made, the deficiency is the amount of the tax imposed by subtitle A, chapter 11, or chapter 12. Additional tax shown on an "amended return", so called, filed after the due date of the return, is a deficiency within the meaning of the Internal Revenue Code.

(b) For purposes of the definition, the income tax imposed by subtitle A and the income tax shown on the return shall both be determined without regard to the credit provided in section 31 for income tax withheld at the source and without regard to so much of the credit provided in section 32 for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds described in section 1451. Payments on account of estimated income tax, like other payments of tax by the taxpayer, shall likewise be disregarded in the determination of a deficiency.

(c) The computation by the district director pursuant to section 6014 (a), of the income tax imposed by subtitle A shall be considered as having been made by the taxpayer and the tax so computed shall be considered as the tax shown by the taxpayer upon his return.

(d) If so much of the credit claimed on the return for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds is greater than the amount of such credit

allowable, the unpaid portion of the tax attributable to such difference will be collected not as a deficiency but as an underpayment of the tax shown on the return.

(e) This section may be illustrated by the following examples:

Example (1). The amount of income tax shown by the taxpayer upon his return for the calendar year 1954 was \$1,600. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. He claimed a credit in the amount of \$2,050 for tax withheld at source on wages under section 3402, and a refund of \$450 (not a rebate under section 6211) was made to him as an overpayment of tax for the taxable year. It is later determined that the correct tax for the taxable year is \$1,850.

A deficiency of \$250 is determined as follows:

Tax imposed by subtitle A.....	\$1,850
Tax shown on return.....	\$1,600
Tax previously assessed (or collected without assessment) as a deficiency.....	None
Total.....	1,600
Amount of rebates made.....	None
Balance.....	1,600
Deficiency.....	250

Example (2). The taxpayer made a return for the calendar year 1954 showing a tax of \$1,250 before any credits for tax withheld at the source. He claimed a credit in the amount of \$800 for tax withheld at source on wages under section 3402 and \$60 for tax paid at source under section 1451 upon interest on bonds containing a tax-free covenant. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. The district director determines that the 2 percent tax paid at the source on tax-free covenant bonds is \$40 instead of \$60 as claimed by the taxpayer and that the tax imposed by subtitle A is \$1,360 (total tax \$1,400 less \$40 paid at source on tax-free covenant bonds). A deficiency in the amount of \$170 is determined as follows:

Tax imposed by subtitle A (\$1,400 minus \$40).....	\$1,360
Tax shown on return (\$1,250 minus \$60).....	\$1,190
Tax previously assessed (or collected without assessment) as a deficiency.....	None
Total.....	1,190
Amount of rebates made.....	None
Balance.....	1,190
Deficiency.....	170

(f) As used in section 6211, the term "rebate" means so much of an abatement, credit, refund, or other repayment as is made on the ground that the tax imposed by subtitle A or B is less than the excess of (1) the amount shown as the tax by the taxpayer upon his return increased by the amount previously assessed (or collected without assessment) as a deficiency over (2) the amount of rebates previously made. For example, assume that the amount of income tax shown by the taxpayer upon his return for the taxable year is \$600 and the amount claimed as a credit under section 31 for income tax withheld at the source is \$900. If the district director determines that the tax imposed by subtitle A is \$600 and makes a refund of \$300, no part of such refund constitutes a "rebate" since the refund is not

made on the ground that the tax imposed by subtitle A is less than the tax shown on the return. If, however, the district director determines that the tax imposed by subtitle A is \$500 and refunds \$400, the amount of \$100 of such refund would constitute a rebate since it is made on the ground that the tax imposed by subtitle A (\$500) is less than the tax shown on the return (\$600). The amount of such rebate (\$100) would be taken into account in arriving at the amount of any deficiency subsequently determined.

§ 301.6212 Statutory provisions; notice of deficiency.

SEC. 6212. NOTICE OF DEFICIENCY.

(a) *In general.* If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B, he is authorized to send notice of such deficiency to the taxpayer by registered mail.

(b) Address for notice of deficiency.

(1) *Income and gift taxes.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 1 or 12, mailed to the taxpayer at his last known address, shall be sufficient for purposes of such chapter and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax returns.* In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary or his delegate has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by registered mail to each spouse at his last known address.

(3) *Estate tax.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted.

(1) *General rule.* If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213 (a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, except in the case of fraud, and except as provided in section 6214 (a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213 (b) (1) (relating to mathematical errors), or in section 6861 (c) (relating to the making of jeopardy assessments).

(2) *Cross references.* For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of:

(A) Deficiency attributable to change of election to take standard deduction where taxpayer and his spouse made separate returns, see section 144 (b).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033 (a).

(3) (C) and (D).

(C) Deficiency attributable to gain on sale or exchange of personal residence, see section 1034 (j).

(D) Deficiency attributable to war loss recoveries where prior benefit rule is elected, see section 1335.

§ 301.6212-1 *Notice of deficiency—(a) General rule.* If a district director determines that there is a deficiency in respect of income, estate, or gift tax imposed by subtitle A or B, he is authorized to notify the taxpayer of the deficiency by registered mail.

(b) Address for notice of deficiency—

(1) *Income and gift taxes.* Unless the district director for the district in which the return in question was filed has been notified under the provisions of section 6903 as to the existence of a fiduciary relationship, notice of a deficiency in respect of income tax or of gift tax shall be sufficient if mailed to the taxpayer at his last known address, even though such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax returns.* If a joint income tax return has been filed by husband and wife, the district director may, unless the district director for the district in which such joint return was filed has been notified by either spouse that a separate residence has been established, send either a joint or separate notice of deficiency to the taxpayers at their last known address. If, however, the proper district director has been so notified, a separate notice of deficiency, that is, a duplicate original of the joint notice, must be sent by registered mail to each spouse at his or her last known address. The notice of separate residences should be addressed to the district director for the district in which the joint return was filed.

(3) *Estate tax.* In the absence of notice, under the provisions of section 6903 as to the existence of a fiduciary relationship, to the district director for the district in which the estate tax return was filed, notice of a deficiency in respect of the estate tax imposed by chapter 11 of subtitle B shall be sufficient if addressed in the name of the decedent or other person subject to liability and mailed to his last known address.

(c) Further deficiency letters restricted.

If the district director mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, no additional deficiency may be determined with respect to income tax for the same taxable year, gift tax for the same calendar year, or estate tax with respect to the taxable estate of the same decedent. This restriction shall not apply in the case of fraud, assertion of greater deficiencies before the Tax Court as provided in section 6214 (a), mathematical errors as provided in section 6213 (b) (1), or jeopardy assessments as provided in section 6861 (c).

§ 301.6213 Statutory provisions; restrictions applicable to deficiencies; petition to Tax Court.

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) *Time for filing petition and restriction on assessment.* Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of

Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421 (a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) Exceptions to restrictions on assessment.

(1) *Mathematical errors.* If the taxpayer is notified that, on account of a mathematical error appearing upon the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212 (c) (1) restricting further deficiency letters), or section 6512 (a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(2) *Assessments arising out of tentative carryback adjustments.* If the Secretary or his delegate determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback with respect to which such amount was applied, credited, or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the return.

(3) *Assessment of amount paid.* Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) *Failure to file petition.* If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Waiver of restrictions.* The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary or his delegate, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) *Cross references.* (1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201 (a) (3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905 (c).

(B) Recovery of foreign estate tax, see section 2018.

§ 301.6213-1 Restrictions applicable to deficiencies; petition to Tax Court—(a) *Time for filing petition and restrictions on assessment—*(1) *Time for filing petition.* Within 90 days after notice of the deficiency is mailed (or within 150 days after mailing in the case of such notice addressed to a person outside the States of the Union and the District of Columbia), as provided in section 6212, a petition may be filed with the Tax Court of the United States for a redetermination of the deficiency. In determining such 90-day or 150-day period, Saturday, Sunday, or a legal holiday in the District of Columbia is not counted as the 90th or 150th day. The term "States of the Union" referred to in this paragraph does not include the Territories of Alaska and Hawaii.

(2) *Restrictions on assessment.* Except as otherwise provided by this section, by section 6861 (a) (relating to jeopardy assessments of income, estate, and gift taxes), by section 6871 (a) (relating to immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership cases), or by section 7485 (in case taxpayer petitions for a review of a Tax Court decision without filing bond), no assessment of a deficiency in respect of a tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made until notice of deficiency has been mailed to the taxpayer, nor until the expiration of the 90-day or 150-day period within which a petition may be filed with the Tax Court, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. As to the date on which a decision of the Tax Court becomes final, see section 7481. Notwithstanding the provisions of section 7421 (a), the making of an assessment or the beginning of a proceeding or levy which is forbidden by this paragraph may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment of deficiencies—*(1) *Mathematical errors.* If a taxpayer is notified of an additional amount of tax due on account of a mathematical error appearing upon the return, such notice is not deemed a notice of deficiency, and the taxpayer has no right to file a petition with the Tax Court upon the basis of such notice, nor is the assessment of such additional amount prohibited by section 6213 (a).

(2) *Tentative carryback adjustments.*

(i) If the district director determines that any amount applied, credited, or refunded under section 6411 (b) with respect to an application for a tentative carryback adjustment is in excess of the overassessment properly attributable to the carryback upon which such application was based, he may assess the amount of the excess as a deficiency as if such deficiency were due to a mathematical error appearing on the return. That is, the district director may assess an amount equal to the excess, and such amount may be collected, without regard to the restrictions on assessment and

collection imposed by section 6213 (a). Thus, the district director, for example, may assess such amount without regard to whether he has mailed the taxpayer a prior notice of deficiency. Either before or after assessing such an amount, the district director will notify the taxpayer that he has made, or will make, such assessment. Such notice will not constitute a notice of deficiency, and the taxpayer may not file a petition with the Tax Court of the United States based on such notice. However, the taxpayer within the applicable period of limitation may file a regular claim for credit or refund based on the carryback, if he has not already filed such a claim, and may maintain a suit based on such claim if it is disallowed or if it is not acted upon by the Internal Revenue Service within 6 months from the date the claim was filed.

(ii) The method provided in subdivision (i) of this paragraph to recover any amount applied, credited, or refunded in respect of an application for a tentative carryback adjustment which the district director later determines should not have been so applied, credited, or refunded is not an exclusive method. Two other methods are available to recover such amount: (a) By way of a deficiency notice under section 6212; or (b) by a suit to recover an erroneous refund under section 7405. The district director, in his discretion, may proceed by way of any one or more of the three available methods to recover any amount which he determines was improperly applied, credited, or refunded in respect of an application for a tentative carryback adjustment.

(3) *Assessment of amount paid.* Any payment made after the mailing of a notice of deficiency which is made by the taxpayer as a payment with respect to the proposed deficiency may be assessed without regard to the restrictions on assessment and collection imposed by section 6213 (a) even though the taxpayer has not filed a waiver of restrictions on assessment as provided in section 6213 (d). A payment of all or part of the deficiency asserted in the notice together with the assessment of the amount so paid will not affect the jurisdiction of the Tax Court. If any payment is made before the mailing of a notice of deficiency, the district director is not prohibited by section 6213 (a) from assessing such amount, and the district director may assess such amount if he deems such action to be proper. If the district director assesses such amount, the assessment is taken into account in determining whether or not there is a deficiency for which a notice of deficiency must be issued. Thus, if such a payment satisfies the taxpayer's tax liability, no notice of deficiency will be mailed and the Tax Court will have no jurisdiction over the matter. In any case in which there is a controversy as to the correct amount of the tax liability, the assessment of any amount pursuant to the provisions of section 6213 (b) (3) shall in no way be considered to be the acceptance of an offer by the taxpayer to settle such controversy.

(4) *Jeopardy.* If the district director believes that the assessment or collection

of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately, as provided in section 6861 (a).

(c) *Failure to file petition.* If no petition is filed with the Tax Court within the period prescribed in section 6213 (a), the district director shall assess the amount determined by him as the deficiency and of which the taxpayer was notified by registered mail and the taxpayer shall pay the same upon notice and demand therefor. In such case the district director will not be precluded from determining a further deficiency and notifying the taxpayer thereof by registered mail. If a petition is filed with the Tax Court the taxpayer should notify the district director who issued the notice of deficiency that the petition has been filed in order to prevent an assessment of the amount determined to be the deficiency.

(d) *Waiver of restrictions.* The taxpayer may at any time by a signed notice in writing filed with the district director waive the restrictions on the assessment and collection of the whole or any part of the deficiency. The notice must in all cases be filed with the district director under whose jurisdiction the audit of the return in question is being conducted. The filing of such notice with the Tax Court does not constitute filing with the district director within the meaning of the Internal Revenue Code. After such waiver has been acted upon by the district director and the assessment has been made in accordance with its terms, the waiver cannot be withdrawn.

§ 301.6214 Statutory provisions; determinations by Tax Court.

SEC. 6214. DETERMINATIONS BY TAX COURT.

(a) *Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax.* The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or addition to the tax should be assessed, if claim therefor is asserted by the Secretary or his delegate at or before the hearing or a rehearing.

(b) *Jurisdiction over other years.* The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

(c) *Final decisions of tax court.* For purposes of this chapter and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

§ 301.6215 Statutory provisions; assessment of deficiency found by Tax Court.

SEC. 6215. ASSESSMENT OF DEFICIENCY FOUND BY TAX COURT.

(a) *General rule.* If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary or his delegate. No part of the amount determined as a deficiency by the

Secretary or his delegate but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) *Cross references.* (1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary or his delegate, see section 7459 (d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459 (e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-built vessels, see section 9 (b) (8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U. S. C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For proration of deficiency to installments, see section 6152 (c).

(8) For extension of time for paying amount determined as deficiency, see section 6161 (b).

§ 301.6215-1 Assessment of deficiency found by Tax Court. Where a petition has been filed with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed by the district director and the unpaid portion of the amount so assessed shall be paid by the taxpayer upon notice and demand therefor.

§ 301.6216 Statutory provisions; cross references.

SEC. 6216. CROSS REFERENCES.

(1) For procedures relating to bankruptcy and receivership, see subchapter B of chapter 70.

(2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.

(3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.

COLLECTION

GENERAL PROVISIONS

§ 301.6301 Statutory provisions; collection authority.

SEC. 6301. COLLECTION AUTHORITY.

The Secretary or his delegate shall collect the taxes imposed by the internal revenue laws.

§ 301.6301-1 Collection authority. The taxes imposed by the internal revenue laws shall be collected by district directors of internal revenue. See, however, section 6304, relating to the collection of certain taxes under the provisions of the Tariff Act of 1930.

§ 301.6302 Statutory provisions; mode or time of collection.

SEC. 6302. MODE OR TIME OF COLLECTION.

(a) *Establishment by regulations.* If the mode or time for collecting any tax is not provided for by this title, the Secretary or his delegate may establish the same by regulations.

(b) *Discretionary method.* Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, sections 4501 (a) or 4511 of chapter 37, or sections 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under

regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

(c) *Use of Government depositories.* The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositories or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

§ 301.6302-1 Use of Federal Reserve banks and authorized commercial banks in connection with the payment of certain employment and excise taxes. For regulations under this section—

(a) With respect to employment taxes under the Federal Insurance Contributions Act and the income tax withheld at source on wages, see § 31.6302 (c)-1 of this chapter.

(b) With respect to the employer tax and the employee tax under the Railroad Retirement Tax Act, see § 31.6302 (c)-2 of this chapter; and

(c) With respect to certain excise taxes, see § 40.6151-1, § 42.6011-1, and § 46.6011-1 of this chapter.

§ 301.6303 Statutory provisions; notice and demand for tax.

SEC. 6303. NOTICE AND DEMAND FOR TAX.

(a) *General rule.* Where it is not otherwise provided by this title, the Secretary or his delegate shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* Except where the Secretary or his delegate believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date.

§ 301.6303-1 Notice and demand for tax—(a) General rule. Where it is not otherwise provided by the Code, the district director shall, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* If any tax is assessed prior to the last date prescribed for payment of such tax, the district director will not demand that such tax be paid before such last date, except where the district director believes collection would be jeopardized by delay.

§ 301.6304 Statutory provisions; collection under the Tariff Act.

SEC. 6304. COLLECTION UNDER THE TARIFF ACT.

For collection under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501 (b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

RECEIPT OF PAYMENT

§ 301.6311 Statutory provisions; payment by check or money order.

SEC. 6311. PAYMENT BY CHECK OR MONEY ORDER.

(a) *Authority to receive.* It shall be lawful for the Secretary or his delegate to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Check or money order unpaid.*
(1) *Ultimate liability.* If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank or trust company on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

§ 301.6311-1 Payment by check or money order—(a) Authority to receive—
(1) *In general.* (i) District directors may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in United States currency at par. District directors may accept such checks or money orders in payment for internal revenue stamps, or for the prepayment of the taxes on wines as authorized by the Wine Regulations prescribed under chapter 51 (part 240 of this chapter), to the extent and under the conditions prescribed in subparagraph (2) of this paragraph. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means: (a) United States postal, bank, express, and telegraph money order; (b) money order issued by a domestic building and loan association (as defined in section 7701 (a) (19)) or by a similar association incorporated under the laws of a possession of the United States; (c) a money order issued by such other organization as the Commissioner may designate; and (d) a money order described in subdivision

(ii) of this subparagraph in cases therein described. However, the district director may refuse to accept any personal check whenever he has good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his tax by postal money order of such country. Such countries presently are: Antigua, the Bahamas, Barbados, Bermuda, British Guiana, British Honduras, British Virgin Islands, Canada, Canal Zone, Cuba, Dominica, Grenada, Jamaica, Montserrat, Nevis, St. Kitts, St. Lucia, St. Vincent, and Trinidad and Tobago.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(a) Each person whose tax is to be paid by the remittance;

(b) The amount of the payment on account of each such person; and

(c) The kind of tax paid.

(2) *Payment for internal revenue stamps; prepayment of wine tax.* The district director may accept checks and money orders described in subparagraph (1) of this paragraph in payment for internal revenue stamps other than stamps for taxes imposed under subchapter F of chapter 39 (relating to silver bullion), stamps for taxes imposed under chapter 34 (relating to documentary stamps), stamps for taxes on distilled spirits imposed under chapter 51, and stamps for taxes imposed under chapter 52 (relating to tobacco and manufactures), and in prepayment of the taxes on wines as authorized by the Wine Regulations prescribed under chapter 51 (part 240 of this chapter). The district director may accept in payment for such taxes certified, cashiers' or treasurers' checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States or money orders described in subparagraph (1) of this paragraph. However, if an application has been submitted by a person desiring to tender personal checks for such taxes or in prepayment of wine taxes, and the application has been approved by the district director, the district director may accept such personal checks as are described in subdivision (i) of subparagraph (1) of this paragraph. The application shall be made to the district director and shall contain the applicant's name, address, firm name (if any), such financial information as will enable the district director to determine the amount of the credit to be extended to the applicant, and the approximate value of stamps to be purchased or the amount of wine taxes to be prepaid during the period fixed by the district director. The district director is authorized to approve or disapprove such application and, if the application is approved, to fix the maximum amount of the value of the internal revenue stamps or of the prepayment of the taxes on wines for which personal checks

will be accepted and to prescribe such other limitations and conditions as he deems appropriate. The district director may, for good cause, discontinue at any time the acceptance of personal checks under the provisions of this subparagraph.

(b) *Checks or money orders not paid—*

(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes or stamps is not released from his liability until the check or money order is paid; and, if the check or money order is not duly paid, he shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 and the regulations thereunder. For assessment of the amount of a check or money order not duly paid, see section 6201 (a) (2) (B) and the regulations thereunder.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has the right to exact payment from the person required to make the payment.

§ 301.6312 Statutory provisions; payment by United States notes and certificates of indebtedness.

SEC. 6312. PAYMENT BY UNITED STATES NOTES AND CERTIFICATES OF INDEBTEDNESS

(a) *General rule.* It shall be lawful for the Secretary or his delegate to receive, at par with an adjustment for accrued interest, Treasury bills, notes and certificates of indebtedness issued by the United States in payment of any internal revenue taxes, or in payment for internal revenue stamps, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Cross references.* (1) For authority to receive silver certificates, see section 5 of the act of June 19, 1934 (48 Stat. 1178; 31 U. S. C. 405a).

(2) For full legal tender status of all coins and currencies of the United States, see section 43 (b) (1) of the Agricultural Adjustment Act, as amended (48 Stat. 52, 113; 31 U. S. C. 462).

(3) For authority to receive obligations under the Second Liberty Bond Act, see section 20 (b) of that act, as amended (56 Stat. 189; 31 U. S. C. 754b).

§ 301.6312-1 Treasury certificates of indebtedness, Treasury notes, and Treasury bills acceptable in payment of internal revenue taxes or stamps. (a) Treasury certificates of indebtedness, Treasury notes, or Treasury bills of any series (not including interim receipts issued by Federal reserve banks in lieu of definitive certificates, notes, or bills) may be ten-

dered at or before maturity in payment of internal revenue taxes, or in payment for stamps, due on the date, or in the case of stamps purchased on the date, on which the certificates, notes, or bills mature or a specified prior date, but only if such certificates, notes, or bills, according to the express terms of their issue, are made acceptable in payment of taxes or for the purchase of stamps. If the taxes for which the certificates, notes, or bills are tendered in payment become due, or the stamps are purchased, on the same date as that on which such certificates, notes, or bills mature, they will be accepted at par plus accrued interest, if any, payable with the principal (not represented by coupons attached) in payment of such taxes or stamps. If the taxes for which the certificates, notes, or bills are tendered in payment become due, or the stamps are purchased, on a date prior to that on which the certificates, notes, or bills mature, they will be accepted at the value specified in the terms under which such certificates, notes, or bills were issued. All interest coupons attached to Treasury certificates of indebtedness or Treasury notes shall be detached by the taxpayer before such certificates or notes are tendered in payment of taxes or stamps.

(b) Receipts given by a district director for Treasury certificates of indebtedness, Treasury notes, or Treasury bills received in payment of internal revenue taxes or for stamps as provided in this section shall contain an adequate description of such certificates, notes, or bills, and a statement of the value, including accrued interest, if any, payable with the principal (not represented by coupons attached), at which accepted, and shall show that the certificates, notes, or bills are tendered by the taxpayer and received by the district director, subject to no condition, qualification, or reservation whatsoever, in payment of an amount of taxes or for stamps no greater than such value. Any certificate, note, or bill offered in payment of internal revenue taxes or for stamps subject to any condition, qualification, or reservation, or for any greater amount than the value at which acceptable in payment of taxes or stamps, as specified in the terms under which such certificate, note, or bill was issued, shall not be deemed to be duly tendered and shall be returned to the taxpayer.

(c) For the purpose of saving taxpayers the expense of transmitting Treasury certificates of indebtedness, Treasury notes, or Treasury bills to the office of the district director in whose district the taxes are payable, or stamps are to be purchased, taxpayers desiring to pay taxes, or purchase stamps, with such certificates, notes, or bills acceptable in payment of taxes or for the purchase of stamps may deposit such certificates, notes, or bills with a Federal reserve bank or branch, subject to the condition that the Federal reserve bank or branch shall issue a receipt in the name of the district director, describing the certificates, notes, or bills by par or dollar face amount and stating on the face of the receipt that the certificates, notes, or bills represented thereby are held by the

bank or branch for redemption at the value specified in the terms under which the certificates, notes, or bills were issued, and application of the proceeds in payment of taxes due or for the purchase of stamps on a specified date by the taxpayer named therein.

§ 301.6312-2 Certain Treasury savings notes acceptable in payment of certain internal revenue taxes. According to the express terms of their issue, the following series of Treasury savings notes are presently acceptable in payment of income taxes (current and back, personal and corporation taxes, and excess profits taxes) and estate and gift taxes (current and back):

- (a) Treasury Savings Notes, Series A.
- (b) Treasury Savings Notes, Series B.
- (c) Treasury Savings Notes, Series C.

§ 301.6313 Statutory provisions; fractional parts of a cent.

SEC. 6313. FRACTIONAL PARTS OF A CENT.

In the payment of any tax imposed by this title not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

§ 301.6313-1 Fractional parts of a cent. In the payment of any tax not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall not be disregarded in the computation of taxes.

§ 301.6314 Statutory provisions; receipt for taxes.

SEC. 6314. RECEIPT FOR TAXES.

(a) *General rule.* The Secretary or his delegate shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no receipts shall be issued in lieu of a stamp representing a tax.

(b) *Duplicate receipts for payment of estate taxes.* The Secretary or his delegate shall, upon request, give to the person paying the tax under chapter 11 (relating to the estate tax) duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(c) *Cross references.* (1) For receipt required to be furnished by employer to employee with respect to employment taxes, see section 6051.

(2) For receipt of discharge of executor from personal liability, see section 2204.

§ 301.6314-1 Receipt for taxes—(a) In general. The district director shall issue a receipt for each tax payment made in cash (other than a payment for stamps sold and delivered). In the case of payments made by check, the canceled check is usually a sufficient receipt. However, upon request, the district director shall issue a receipt for such payment (other than a payment for stamps sold and delivered). No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(b) *Duplicate receipt for payment of estate taxes.* Upon request, the district director will issue duplicate receipts to

the person paying the estate tax, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts. For definition of the term "executor", see section 2203.

§ 301.6315 Statutory provisions; payments of estimated income tax.

SEC. 6315. PAYMENTS OF ESTIMATED INCOME TAX.

Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year.

§ 301.6315-1 Payments of estimated income tax. The payment of any installment of the estimated income tax (see sections 6015 and 6016) shall be considered payment on account of the income tax for the taxable year for which the estimate is made. The aggregate amount of the payments of estimated tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return.

§ 301.6316 Statutory provisions; payment by foreign currency.

SEC. 6316. PAYMENT BY FOREIGN CURRENCY. The Secretary or his delegate is authorized in his discretion to allow payment of taxes in the currency of a foreign country under such circumstances and subject to such conditions as the Secretary or his delegate may by regulations prescribe.

LIEN FOR TAXES

§ 301.6321 Statutory provisions; lien for taxes.

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 301.6321-1 Lien for taxes. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. For the special lien for estate and gift taxes, see section 6324 and § 301.6324-1.

§ 301.6322 Statutory provisions; period of lien.

SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

§ 301.6323 Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of lien without notice.* Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate.

(1) *Under State or territorial laws.* In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.* In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of notice.* If the notice filed pursuant to subsection (a) (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a) (2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) *Exception in case of securities.*

(1) *Exception.* Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.* As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

§ 301.6323-1 Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors—(a) Invalidation of lien without notice—(1) Filing of notice. The lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice of lien has been filed. (See, however, section 6323 (c) and paragraph (b) of this section, relating to the circumstances under which the lien is not

valid with respect to a security even though notice thereof is duly filed.) The place for the filing of the notice of lien is—

(i) The office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has designated an office within the State or Territory for the filing of such notice;

(ii) The office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(iii) The office of the clerk of the United States District Court for the District of Columbia if the property subject to the lien is situated in the District of Columbia.

(2) *Meaning of terms.* (i) As used in section 6323 and this section—

(a) The term "purchaser" means a person who, for a valuable present consideration, acquires property or an interest in property.

(b) The term "judgment creditor" means a person who has obtained a valid judgment in a court of record and of competent jurisdiction for the recovery of specifically designated property or for a certain sum of money and, in the case of a judgment for the recovery of a certain sum of money, who has a perfected lien under such judgment on the property involved. The term "judgment" does not include an inchoate lien, such as an attachment lien, unless and until such lien has ripened into a judgment. *United States v. Security Trust and Savings Bank* (1950) 340 U. S. 47. Nor does the term "judgment" include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity, such as, for example, the action of State taxing authorities. *United States v. Gilbert Associates* (1953) 345 U. S. 361; and *United States v. City of New Britain* (1954) 347 U. S. 81.

(ii) The determination whether a person is a mortgagee, pledgee, purchaser, or judgment creditor, entitled to the protection of section 6323 (a), shall be made by reference to the realities and the facts in a given case rather than to the technical form or terminology used to designate such person. Thus, a person who is in fact and in law a mortgagee, pledgee, or purchaser will be entitled as such to the protection of section 6323 (a) even though such person is otherwise designated under the law of a State, such as the Uniform Commercial Code.

(3) *Form of notice.* The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

(b) *Exception in case of securities—*
(1) *Exception.* Even though a notice of lien provided for in section 6321 has been filed in the manner prescribed in section 6323 (a), the lien shall not be valid with respect to a security, as defined in section 6323 (c) (2), as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien. An adequate and full consideration in money or money's worth, as used in section 6323 (c), means that the mortgage, pledge, or purchase of the security must have been made in good faith, and the consideration must have been an adequate and full equivalent reducible to a money value. A purchase of property made in the ordinary course of business (that is, a transaction which is bona fide and made at arm's length) will be considered as made for an adequate and full consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(2) *Definition of security.* As used in section 6323 (c), the term "security" means: Any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(c) *Disclosure of amount of outstanding lien.* (1) If a notice of lien has been filed, the district director to whom the assessment which gave rise to the lien is charged is authorized to disclose information as to the amount of the outstanding obligation secured by the lien to any person who has a proper interest in determining the amount of the outstanding obligation. Any person desiring such information should present to the district director a written request. Such request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting such information. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon satisfactory proof of such right or of the intention to obtain such right, be considered to have a proper interest.

(2) If the district director determines that the applicant is entitled to the information requested, he will disclose to such applicant the total amount of the outstanding obligation secured by the lien.

(3) The Commissioner may disclose the amount of any outstanding obligation

secured by the lien if he determines such action is warranted under the facts and circumstances in the particular case.

(4) The provisions of this paragraph apply to any notice of lien filed under section 6323 or corresponding provisions of prior internal revenue laws.

(d) *Application of section 6323 to liens imposed under section 3670 of the Internal Revenue Code of 1939.* In the case of any lien arising under section 3670 of the Internal Revenue Code of 1939 or the corresponding provisions of prior law (relating to the general tax lien) which is in effect on January 1, 1955, the provisions of section 6323 shall be applicable to such lien on and after such date in lieu of the provisions of section 3672 of the Internal Revenue Code of 1939 or the corresponding provisions of prior law.

§ 301.6324 Statutory provisions; special liens for estate and gift taxes.

SEC. 6324. SPECIAL LIENS FOR ESTATE AND GIFT TAXES.

(a) *Liens for estate tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities).

(1) *Upon gross estate.* Unless the estate tax imposed by chapter 11 is sooner paid in full, it shall be a lien for 10 years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) *Liability of transferees and others.* If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(3) *Continuance after discharge of executor.* The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money, or money's worth, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees.

(b) *Lien for gift tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities), the gift tax imposed by chapter 12 shall be a lien upon all gifts made during the calendar year, for 10 years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(c) *Exception in case of securities.* The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323 (c) (2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

§ 301.6324-1 *Special liens for estate and gift taxes; personal liability of transferees and others.*—(a) *Estate tax.* (1) The lien imposed by section 6324 (a) attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency in tax found to be due upon review and audit. If the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, shall be personally liable for such tax to the extent of the value, at the time of the decedent's death, of such property.

(2) Unless the tax is paid in full, and except as otherwise provided in section 6324 (c) (relating to transfers of securities), the lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except that such lien shall be divested with respect to:

(i) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof;

(ii) Such property as is transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, by the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate un-

der sections 2034 to 2042, inclusive (or the corresponding provisions of the Internal Revenue Code of 1939), or such property as is transferred by the transferee of such person. In such case, a like lien attaches to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except such part thereof as may be transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth. See paragraph (b) (1) of § 301.6323-1 for the meaning of the term "an adequate and full consideration in money or money's worth";

(iii) Such portion of the gross estate (or any interest therein) as has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth, if payment is made of the full amount of tax determined by the district director pursuant to a request of the executor for discharge from personal liability as authorized by section 2204 (relating to discharge of executor from personal liability), but there is substituted a like lien upon the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees;

(iv) Such property as to which the district director has issued a certificate releasing the lien pursuant to section 6325.

(b) *Lien for gift tax.* Except as provided in section 6324 (c) (relating to securities), a lien attaches upon all gifts made during the calendar year for the amount of the tax imposed upon the gifts made during such year. The lien extends for a period of 10 years from the time the gifts were made, unless the tax is sooner paid. If the tax is not paid when due, the donee of any gift becomes personally liable for the tax to the extent of the value of his gift. Any part of the property comprised in the gift which is transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, is divested of the lien, but a like lien to the extent of the value of such gift attaches to all the property (including after-acquired property) of the donee (or the transferee), except any part transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth. See paragraph (b) (1) of § 301.6323-1 for the meaning of the term "an adequate and full consideration in money or money's worth".

(c) *Application of lien imposed by section 6321.* The general lien under section 6321 and the special lien under subsection (a) or (b) of section 6324 for the estate or gift tax are not exclusive of each other, but are cumulative. Each lien will arise when the conditions precedent to the creation of such lien are met and will continue in accordance with the provisions applicable to the particular lien. Thus, the special lien may exist without the general lien being in force, or the general lien may exist without

the special lien being in force, or the general lien and the special lien may exist simultaneously, depending upon the facts and pertinent statutory provisions applicable to the respective liens.

(d) *Application of section 6324 to estate and gift tax liens imposed under the Internal Revenue Code of 1939.* In the case of any lien arising under section 827 or 1009 of the Internal Revenue Code of 1939 (relating to liens for estate and gift taxes, respectively) which is in effect on January 1, 1955, the provisions of section 6324 shall be applicable to such lien on and after such date in lieu of the provisions of section 827 or 1009.

§ 301.6325 *Statutory provisions; release of lien or partial discharge of property.*

SEC. 6325. RELEASE OF LIEN OR PARTIAL DISCHARGE OF PROPERTY.

(a) *Release of lien.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied, has become legally unenforceable, or, in the case of the estate tax imposed by chapter 11 or the gift tax imposed by chapter 12, has been fully satisfied or provided for; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such rules or regulations.

(b) *Partial discharge of property.*

(1) *Property double the amount of the liability.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority to such lien.

(2) *Part payment or interest of United States valueless.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in part satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the fair market value of such part and to such liens thereon as have priority to the lien of the United States.

(c) *Effect of certificate of release or partial discharge.* A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(d) *Cross references.* (1) For single bond complying with the requirements of both subsection (a) (2) and section 6165, see section 7102.

(2) For other provisions relating to bonds, see generally chapter 73.

(3) For provisions relating to suits to enforce lien, see section 7403.

(4) For provisions relating to suits to clear title to realty, see section 7424.

§ 301.6325-1 Release of lien or partial discharge of property—(a) Release of lien—(1) Liability satisfied or unenforceable. The district director to whom is charged an assessment in respect of any internal revenue tax shall issue a certificate of release of any lien imposed with respect to such tax, whenever he finds that the liability for the amount assessed (together with all interest in respect thereof) has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the district director. The form to be used by the district director is Form 669, "Certificate of Release of Federal Tax Lien".

(2) *Estate or gift tax liability fully satisfied or provided for.* (i) If the district director determines that the tax liability for estate or gift tax has been fully satisfied, he may issue his certificate releasing any or all property from the lien imposed thereon. If the district director determines that the tax liability for estate or gift tax has been adequately provided for, he may issue his certificate releasing particular items of property from the lien. The issuance of such a certificate is a matter resting within the discretion of the district director, and a certificate will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. The tax will be considered fully satisfied only when investigation has been completed and payment of the tax, including any deficiency determined, has been made.

(ii) An application for a release of the lien for estate or gift tax should be filed with the district director charged with the assessment in respect of the tax. It should be made in writing under penalties of perjury and should explain the circumstances that require the release, and should fully describe the particular items for which the release is desired. In the case of an estate tax lien, the application should show the applicant's relationship to the estate, such as execu-

tor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the estate or gift tax return has not been filed, a statement under penalties of perjury may be required showing (a) the value of the property to be released, (b) the basis for such valuation, (c) in the case of the estate tax, the approximate value of the gross estate and the approximate value of the total real property included in the gross estate, and (d) in the case of the gift tax, the total amount of gifts made during the calendar year and the prior calendar years subsequent to the enactment of the Revenue Act of 1932 and the approximate value of all real estate subject to the gift tax lien, and (e) if the property is to be sold or otherwise transferred, the name and address of the purchaser or transferee and the consideration, if any, paid or to be paid by him.

(3) *Bond accepted.* The district director may, in his discretion, issue a certificate of release of any tax lien if he is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the district director and the taxpayer. For provisions relating to bonds, see sections 7101 and 7102 and the regulations thereunder.

(b) *Discharge of specific property from the lien—(1) Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to any tax lien if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by such lien and of the amount of all other liens upon such property which have priority to such lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property. The form to be used by the district director is Form 669-A, "Certificate of Discharge of Property from Federal Tax Lien". For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(ii) The following example illustrates a case in which a certificate of discharge may not be given under this subparagraph:

Example: The Federal tax liability secured by a lien is \$1,000. The fair market value of all property which after the discharge will continue to be subject to the Federal tax lien is \$10,000. There is a prior mortgage on the property of \$5,000, including interest, and the property is subject to a prior lien of \$100 for real estate taxes. Accordingly, the taxpayer's equity in the property over and above the amount of the mortgage and real estate taxes is \$4,900, or nearly five times the amount required to pay the assessed tax on which the Federal tax lien is based. Nevertheless, a discharge under this subparagraph is not permissible. In the illustration, the sum of the amount of

the Federal tax liability (\$1,000) and of the amount of the prior mortgage and the lien for real estate taxes (\$5,000+\$100=\$5,100) is \$6,100. Double this sum is \$12,200, but the fair market value of the remaining property is only \$10,000. Hence, a discharge of any part of the property subject to the tax lien is not permissible under this subparagraph, since the Code requires that the fair market value of the remaining property be at least double the sum of two amounts, one amount being the outstanding Federal tax liability and the other amount being all prior liens upon such property. In order that the discharge may be issued, it would be necessary that the remaining property be worth not less than \$12,200.

(2) *Part payment.* The district director may, in his discretion, issue a certificate of discharge of any part of property subject to the lien if there is paid over to him in part satisfaction of the liability secured by the lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued, as such value has been determined by the district director in the light of the fair market value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. The form to be used by the district director is Form 669-B, "Certificate of Discharge of Property from Federal Tax Lien". For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(3) *Interest of United States valueless.* The district director may, in his discretion, issue a certificate of discharge of any part of property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value. The form to be used by the district director is Form 669-C, "Certificate of Discharge of Property from Federal Tax Lien". For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge of property from a Federal tax lien shall submit to the district director to whom the assessment is charged a written application in triplicate, under penalties of perjury, requesting that the certificate be issued. The application shall contain the following information:

(i) A clear description of the property with respect to which the discharge is desired and, where applicable, of the property remaining subject to the lien;

(ii) The reason the discharge is sought;

(iii) A description of the Federal tax lien in respect of which the certificate of discharge is sought, including the amount, nature of the tax, the dates of

assessment, and, if applicable, an appropriate reference to the registry and the book in which the notice of Federal tax lien is filed, indexed, or recorded, and the date of the filing of the notice;

(iv) A statement in numbered paragraphs of all facts material to the application, including the amount, character, and dates (both of execution and of record) of all encumbrances of record prior to the Federal lien, with appropriate reference to the registry and the page and volume of the book in which each such encumbrance is recorded;

(v) The amounts, character, and dates of execution of any unrecorded encumbrances believed to be prior to the Federal tax lien, including information as to how and when such encumbrances arose;

(vi) In support of the application, the applicant must furnish proof sufficient to establish the fair market value of the property with respect to which the discharge is sought, and where applicable, proof sufficient to establish the fair market value of the property which will remain subject to the lien; and

(vii) Any other information which in the opinion of the applicant might have a bearing upon the determination to be made.

Applications submitted under subparagraph (1) or (3) of this paragraph do not require the submission of any sum of money for the discharge of the property from a tax lien. Since the amount to be paid for the issuance, under subparagraph (2) of this paragraph, of a certificate of discharge of property from a Federal tax lien is a matter for the determination of the district director after consideration of the facts and law involved, no sum of money or check should be submitted with the application. The district director shall cause a thorough investigation to be made as to the proof and accuracy of all material statements made in the application. Upon completion of such investigation the district director will make his determination and advise the applicant of the decision reached.

(c) *Effect of certificate of release or discharge of specific property.* A certificate of release of lien or a certificate discharging specific property from the lien issued under section 6325 shall be conclusive that the lien upon the property covered by the certificate is extinguished.

§ 301.6326 *Statutory provisions; cross references.*

SEC. 6326. CROSS REFERENCES. (1) For lien in case of tax on distilled spirits, see section 5004.

(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U. S. C. 35).

(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57 (j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U. S. C. 93).

(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876-877; 11 U. S. C. 107).

(5) For collection of taxes in connection with wage earners' plans in bankruptcy

courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (52 Stat. 938; 11 U. S. C. 1080).

(6) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(7) For priority of lien of the United States in case of insolvency, see R. S. 3466 (31 U. S. C. 191).

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

§ 301.6331 *Statutory provisions; levy and distraint.*

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or Delegate.* If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) *Seizure and sale of property.* The term "levy" as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) *Successive seizures.* Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) *Cross references.* (1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceedings applicable to sale of seized property, see section 6335.

§ 301.6331-1 *Levy and distraint—(a) Authority to levy—(1) In general.*

If any person liable to pay any tax neglects or refuses to pay such tax within 10 days after notice and demand, the district director to whom the assessment is charged or, upon his request, any other district director may proceed to collect the tax by levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to such person or on which there is a lien provided by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such tax. As used in section 6331 and this section, the

term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with any costs and expenses that may accrue in addition thereto. For exemption of certain property from levy, see section 6334 and the regulations thereunder. Property subject to a Federal tax lien, which has been sold or otherwise transferred by the taxpayer, may be seized in the hands of the transferee or of any subsequent transferee. Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, such as, for example, receivables, bank accounts, evidences of debt, securities, and accrued salaries, wages, commissions, and other compensation.

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331 (a).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation—*

(i) *Federal employees.* Levy may be made upon the accrued salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency, or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made,

such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee.

(ii) *State and municipal employees.* Accrued salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (38 Stat. 1169; 46 U. S. C. 601), accrued wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See section 6334 (c).

(b) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the district director may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

§ 301.6332 Statutory provisions; surrender of property subject to levy.

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) *Requirement.* Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

§ 301.6332-1 *Surrender of property subject to levy—(a) Requirement.* Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the district director, surrender such property or rights (or discharge such obligation) to the district director, except such part of the property or right as is, at the time of such demand, sub-

ject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses, upon demand of the district director, to surrender any property or rights to property subject to levy, as required by section 6332 (a), shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in section 6332 (a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation. Thus, in the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality, who as such officer or employee is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see § 301.6331 (a) (4) (i).

§ 301.6333 Statutory provisions; production of books.

SEC. 6333. PRODUCTION OF BOOKS.

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate.

§ 301.6333-1 *Production of books.* If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the internal revenue officer who has made or is about to make the levy, exhibit such books or records to such officer.

§ 301.6334 Statutory provisions; property exempt from levy.

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) *Enumeration.* There shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value;

(3) *Books and tools of a trade, business, or profession.* So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value.

(b) *Appraisal.* The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary or his delegate shall summon three disinterested individuals who shall make the valuation.

(c) *No other property exempt.* Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

§ 301.6334-1 Property exempt from levy—(a) Enumeration. There shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of his family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value.

(3) *Books and tools of a trade, business, or profession.* So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value.

(b) *Appraisal.* The internal revenue officer seizing property of the type described in section 6334 (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *No other property exempt.* No property or rights to property are exempt from levy other than the property specifically exempted by section 6334 (a). No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

§ 301.6335 Statutory provisions; sale of seized property.

SEC. 6335. SALE OF SEIZED PROPERTY.

(a) *Notice of seizure.* As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or, shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the prop-

erty seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the same manner as that prescribed in subsection (a), and shall cause a notification to be published in some newspaper within the county wherein such seizure is made, or, if there be no newspaper published in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331 (a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

(c) *Sale of indivisible property.* If any property liable to levy is not divisible, so as to enable the Secretary or his delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of such property shall be sold.

(d) *Time and place of sale.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the property is seized, except by special order of the Secretary or his delegate.

(e) *Manner and conditions of sale.*

(1) *Minimum price.* Before the sale the Secretary or his delegate shall determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale the amount of the minimum price, the property shall be declared to be purchased at such price for the United States; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Secretary or his delegate shall take into account the expense of making the levy and sale.

(2) *Additional rules applicable to sale.* The Secretary or his delegate shall by regulations prescribe the manner and other conditions of the sale of property seized by levy. If one or more alternative methods or conditions are permitted by regulations, the Secretary or his delegate shall select the alternatives applicable to the sale. Such regulations shall provide:

(A) That the sale shall not be conducted in any manner other than—

(i) By public auction, or

(ii) By public sale under sealed bids.

(B) In the case of the seizure of several items of property, whether such items shall be offered separately, in groups, or in the aggregate; and whether such property shall be offered both separately (or in groups) and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) Whether the announcement of the minimum price determined by the Secretary or his delegate may be delayed until the receipt of the highest bid.

(D) Whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period (not to exceed 1 month) as may be determined by the Secretary or his delegate to be appropriate.

(E) The extent to which methods (including advertising) in addition to those prescribed in subsection (b) may be used in giving notice of the sale.

(F) Under what circumstances the Secretary or his delegate may adjourn the sale from time to time (but such adjournments shall not be for a period to exceed in all 1 month).

(3) *Payment of amount bid.* If payment in full is required at the time of acceptance of a bid and is not then and there paid, the Secretary or his delegate shall forthwith proceed to again sell the property in the manner provided in this subsection. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the Secretary or his delegate, the sale may be declared by the Secretary or his delegate to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) and this subsection. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

(f) *Stay of sale or seized property pending Tax Court decision.* For restrictions on sale of seized property pending Tax Court decision, see section 6863 (b) (3).

§ 301.6335-1 Sale of seized property—

(a) *Notice of seizure.* As soon as practicable after seizure of property, the internal revenue officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the district director shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper within the county wherein such seizure is made. However, if there is no newspaper published in such county, such notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The district director may use other methods of giving notice of sale

and of advertising seized property in addition to those referred to in subparagraph (1) when he believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in section 6331 (a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of the sale of property seized by levy shall be as follows:

(1) *Time and place of sale.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under section 6335 (b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the district director under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, he may order that the sale be held in such other place. The sale shall be held at the time and place stated in the notice of sale.

(2) *Adjournment of sale.* When it appears to the district director that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the district director may adjourn, or cause the internal revenue officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* The district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. If no person offers for such property at the sale the amount of the minimum price, the property shall be declared purchased at such price for the United States; otherwise, the property shall be declared to be sold to the highest bidder. The internal revenue officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property—*(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the district director by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see section 6342 (b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale—

- (a) As separate items, or
- (b) As groups of items, or

(c) In the aggregate, or

(d) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The district director shall select whichever of the foregoing methods of offering the property for sale as, in his opinion, is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal property as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale "as is" and "where is" and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the internal revenue officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale:

(a) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(b) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The district director shall sell the property either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(a) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(b) *Form for use by bidders.* A bid shall be submitted on a form which will

be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(c) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or in groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if that bid is \$200 or less. If the highest alternative bid submitted is more than \$200, the bidder shall remit 20 percent of the highest alternative bid or \$200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

(d) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(e) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in subparagraph (4) (ii) of this paragraph. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the internal revenue officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(f) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(g) *Payment of bid price.* All payments for property sold under this sec-

tion shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the internal revenue officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in section 6335 (e) and the regulations thereunder. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the district director, the sale may be declared by the district director to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b), (c), and (e) of section 6335 and the regulations thereunder. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(9) *Stay of sale of seized property pending Tax Court decision.* For restrictions on sale of seized property pending Tax Court decision, see section 6863 (b) (3) and the regulations thereunder.

§ 301.6336 Statutory provisions; sale of perishable goods.

SEC. 6336. SALE OF PERISHABLE GOODS.

If the Secretary or his delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and—

(1) *Return to owner.* If the owner of the property can be readily found, the Secretary or his delegate shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner—

(A) Pays to the Secretary or his delegate an amount equal to the appraised value, or

(B) Gives bond in such form, with such sureties, and in such amount as the Secretary or his delegate shall prescribe, to pay the appraised amount at such time as the Secretary or his delegate determines to be appropriate in the circumstances.

(2) *Immediate sale.* If the owner does not pay such amount or furnish such bond in accordance with this section, the Secretary or his delegate shall as soon as practicable make public sale of the property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

§ 301.6336-1 Sale of perishable goods—(a) Appraisal of certain seized property.

If the district director determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.* If the owner of the property can be readily found, the district director shall give him written notice of his determination of the appraised value of the property. However, if the district director determines that the circumstances require immediate action, he may give the owner an oral notice of his determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner—

(1) Pays to the district director an amount equal to the appraised value, or

(2) Gives an acceptable bond as prescribed by section 7101 and the regulations thereunder. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the district director determines to be appropriate in the circumstances.

(c) *Immediate sale.* If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) within such time, the district director shall as soon as practicable make public sale of the property in accordance with the following terms and conditions—

(1) *Notice of sale.* If the owner can readily be found, a notice shall be given to him. A notice of sale also shall be

posted in two public places in the county in which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The district director may give such other notice and in such other manner as he deems advisable under the circumstances.

(2) *Sale.* The property shall be sold at public auction to the highest bidder.

(3) *Terms.* The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made in cash, or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

§ 301.6337 Statutory provisions; redemption of property.

SEC. 6337. REDEMPTION OF PROPERTY.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary or his delegate at any time prior to the sale thereof, and upon such payment the Secretary or his delegate shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale.*

(1) *Period.* The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 1 year after the sale thereof.

(2) *Price.* Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

(c) *Record.* When any lands sold are redeemed as provided in this section, the Secretary or his delegate shall cause entry of the fact to be made upon the record mentioned in section 6340, and such entry shall be evidence of such redemption.

§ 301.6337-1 Redemption of property—(a) Before sale.

Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the district director at any time prior to the sale of the property. Upon such payment the district director shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale—(1) Period.*

The owner of any real estate sold as provided in section 6335, his heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within one year after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the district director for the internal revenue district in which the property is situated, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.* When any real property is redeemed, the district director shall cause entry of the fact to be made upon the record of sale kept in accordance with section 6340, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the district director of the internal revenue district in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

§ 301.6338 Statutory provisions; certificate of sale; deed of real property.

SEC. 6338. CERTIFICATE OF SALE; DEED OF REAL PROPERTY.

(a) *Certificate of sale.* In the case of property sold as provided in section 6335, the Secretary or his delegate shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary or his delegate shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) *Real property purchased by United States.* If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor after its preparation and the endorsement of approval as to its form by the United States district attorney for the district in which the property is situated, and the Secretary or his delegate shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

§ 301.6338-1 Certificate of sale; deed of real property—(a) Certificate of sale.

In the case of property sold as provided in section 6335 (relating to sale of seized property), the district director shall give

to the purchaser a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time prescribed in section 6337, the district director shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) *Deed to real property purchased by the United States.* If real property is declared purchased by the United States at a sale pursuant to section 6335, the district director shall at the proper time execute a deed therefor after its preparation and the endorsement of approval as to the form by the United States district attorney for the district in which the property is situated, and the district director shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

§ 301.6339 Statutory provisions; legal effect of certificate of sale of personal property and deed of real property.

SEC. 6339. LEGAL EFFECT OF CERTIFICATE OF SALE OF PERSONAL PROPERTY AND DEED OF REAL PROPERTY

(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) *As conveyances.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) *Deed of real property.* In the case of the sale of real property pursuant to section 6335—

(1) *Deed as evidence.* The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed of conveyance of title.* If the proceedings of the Secretary or his delegate as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

§ 301.6339-1 Legal effect of certificate of sale of personal property and deed of real property—(a) Certificate of sale of property other than real property. In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) *As conveyance.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.* In the case of the sale of real property pursuant to section 6335—

(1) *Deed as evidence.* The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the district director as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the

time the lien of the United States attached thereto.

§ 301.6340 Statutory provisions; records of sale.

SEC. 6340. RECORDS OF SALE.

(a) *Requirement.* The Secretary or his delegate shall, for each internal revenue district, keep a record of all sales of real property under section 6335 and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the Secretary or his delegate shall be evidence in any court of the truth of the facts therein stated.

§ 301.6340-1 Records of sale—(a) Requirement. Each district director shall keep a record of all sales under section 6335 of real property situated within his district and of redemptions of such property. The records shall set forth (1) the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, the date of the deed, and, in the case of redemption of the property, (2) the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the district director shall be evidence in any court of the truth of the facts therein stated.

§ 301.6341 Statutory provisions; expense of levy and sale.

SEC. 6341. EXPENSE OF LEVY AND SALE.

The Secretary or his delegate shall determine the expenses to be allowed in all cases of levy and sale.

§ 301.6341-1 Expense of levy and sale. The district director shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the district director shall properly apportion the expenses to the real property (or to each tract).

§ 301.6342 Statutory provisions; application of proceeds of levy.

SEC. 6342. APPLICATION OF PROCEEDS OF LEVY.

(a) *Collection of liability.* Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332, or by sale of seized property) shall be applied as follows:

(1) *Expense of levy and sale.* First, against the expenses of the proceedings under this subchapter;

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying paragraph (1) shall then be applied against such tax

liability (and, if such tax was not previously assessed, it shall then be assessed):

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (1) and (2) shall then be applied against the liability in respect of which the levy was made.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Secretary or his delegate to the person or persons legally entitled thereto.

§ 301.6342-1 *Application of proceeds of levy—(a) Collection of liability.* Any money realized by proceedings under subchapter D of chapter 64 of the Internal Revenue Code (whether by seizure, by surrender under section 6332, or by sale of seized property), shall be applied as follows:

(1) *Expense of levy and sale.* First, against the expenses of the proceedings as allowable under section 6341;

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying subparagraph (1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying subparagraphs (1) and (2) of this paragraph shall then be applied against the liability in respect of which the levy was made.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this paragraph shall, upon application and satisfactory proof in support thereof, be credited or refunded by the district director to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

§ 301.6343 *Statutory provisions; authority to release levy.*

SEC. 6343. AUTHORITY TO RELEASE LEVY.

It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

§ 301.6343-1 *Authority to release levy—(a) Authority.* The district director may release the levy upon all or part of the property or rights to property levied upon, if the delinquent taxpayer complies with such of the conditions under paragraph (b) of this section as the district director may require and if the district director determines that such action will facilitate the collection of the liability. The release shall not operate to prevent any subsequent levy.

(b) *Conditions for release.* The district director may release the levy as authorized under paragraph (a) of this section, if—

(1) *Escrow arrangement.* The delinquent taxpayer offers, and there is ac-

cepted by the district director, a satisfactory arrangement placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(2) *Bond.* The delinquent taxpayer delivers an acceptable bond to the district director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form as provided in section 7101 and the regulations thereunder.

(3) *Payment of amount of United States' interest in the property.* There is paid to the district director an amount determined by him to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(4) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing his employer to pay to the district director amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with the district director, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(5) *Installment payment arrangement.* The delinquent taxpayer makes satisfactory arrangements with the district director to pay the amount of the liability in installments.

(6) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502 (a) (2) and the regulations thereunder.

§ 301.6344 *Statutory provisions; cross references.*

SEC. 6344. CROSS REFERENCES.

(a) *Length of period.* For period within which levy may be begun in case of—

(1) Income, estate, and gift taxes, see sections 6502 (a) and 6503 (a) (1).

(2) Employment and miscellaneous excise taxes, see section 6502 (a).

(b) *Delinquent collection officers.* For distraint proceedings against delinquent internal revenue officers, see section 7803 (d).

(c) *Other references.* For provisions relating to—

(1) Stamps, marks and brands, see section 6807.

(2) Administration of real estate acquired by the United States, see section 7506.

ABATEMENTS, CREDITS, AND REFUNDS

PROCEDURE IN GENERAL

§ 301.6401 *Statutory provisions; amounts treated as overpayments.*

SEC. 6401. AMOUNTS TREATED AS OVERPAYMENTS.

(a) *Assessment and collection after limitation period.* The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b) *Excessive withholding.* If the amount allowable as a credit under section 31 (relating to credit for tax withheld at the source under chapter 24) exceeds the taxes imposed by chapter 1 against which such credit is allowable, the amount of such excess shall be considered an overpayment.

(c) *Rule where no tax liability.* An amount paid as tax shall not be considered not to constitute an overpayment solely by

reason of the fact that there was no tax liability in respect of which such amount was paid.

§ 301.6401-1 *Amounts treated as overpayments.* (a) The term "overpayment" includes:

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as a credit under section 31 (relating to credit for income tax withheld at source on wages) which exceeds the correct income tax imposed by chapter 1 for such year.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

§ 301.6402 *Statutory provisions; authority to make credits or refunds.*

SEC. 6402. AUTHORITY TO MAKE CREDITS OR REFUNDS

(a) *General rule.* In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

(b) *Credits against estimated tax.* The Secretary or his delegate is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary (or his delegate) to be an overpayment of the income tax for a preceding taxable year.

§ 301.6402-1 *Authority to make credits or refunds.* The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment, and the balance, if any, shall be refunded to such person by the Commissioner.

§ 301.6402-2 *Claims for credit or refund—(a) Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) The claim, together with appropriate supporting evidence, must be filed in the office of the district director for the internal revenue district in which the tax was paid. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on Saturday, Sunday, or a legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a

claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

(2) The district director has no authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* Claims by the taxpayer for the refunding of overpayments of taxes, interest, penalties, and additions to tax shall be made on Form 843. For special rules applicable to income taxes, see § 301.6402-3.

(d) *Separate claims for separate taxable periods.* In the case of income, gift, and Federal unemployment taxes, a separate claim shall be made for each type of tax for each taxable year or period.

(e) *Proof of representative capacity.* If a return is filed by an individual and, after his death, a refund claim is filed by his legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such cases a power of attorney must accompany the claim.

(f) *Mailing of refund check.* Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent to such persons in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks. The district director may, however, send any such check direct to the claimant. In this connection, see section 3477 of the Revised Statutes (31 U. S. C. 203).

§ 301.6402-3 *Special rules applicable to income tax.* (a) In the case of income tax, claims for refund may not only be made on Form 843 but may also be made on Form 1040, Form 1040A, or an amended return.

(b) A properly executed income tax return on Form 1040 shall, at the elec-

tion of the taxpayer, constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed. An election to treat the return as a claim for refund or credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return is filed. If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated income tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

(c) The filing of a properly executed income tax return on Form 1040A shall constitute an election by the taxpayer to have the return treated as a claim for refund, and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the district director's computation of the tax on the basis of the return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered filed.

(d) In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated income tax.

§ 301.6402-4 *Payments in excess of amounts shown on return.* In certain cases, the taxpayer's payments in respect of his tax liability, made before the filing of his return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of the income tax when the estimated tax or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or where a corporation obtains an extension of time for filing its return and makes installment payments based on its estimate of its tax liability which exceed the tax liability shown on the return subsequently filed. In any case in which the district director determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, he may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §§ 301.6402-2 and 301.6402-3 are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the district director fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports

of refunds of more than \$100,000 to the Joint Committee on Internal Revenue Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely return.

§ 301.6402-5 *Claim for payment of judgment obtained against district director.* (a) A claim for the amount of a judgment against a district director for the recovery of taxes, penalties, or other sums should be made on a properly executed Form 843, and filed directly with the Commissioner of Internal Revenue, Washington 25, D. C. The claim must be verified by a written declaration that it is made under the penalties of perjury. Two certified copies of the final judgment and a certificate of probable cause should be attached to the claim. If the payment of court costs is claimed, an itemized bill of the court costs paid, receipted by the clerk of the court, should also accompany the claim. With respect to the certificate of probable cause, 28 U. S. C. 2006 provides:

SEC. 2006. EXECUTION AGAINST REVENUE OFFICER.

Execution shall not issue against a * * * revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

- (1) Probable cause existed; or
- (2) The officer acted under the directions of the Secretary of the Treasury or other proper Government officer.

When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

If the case was appealed, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

(b) If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name, accompanied by two certified copies of the final judgment, and an itemized bill of the court costs paid. A certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied and specifying the exact sum paid in its satisfaction, should accompany the claim.

§ 301.6402-6 *Claim for payment of judgment obtained in United States district court against the United States.* A claim for the payment of a judgment rendered by a United States district court against the United States representing taxes, penalties, or other sums should be made on a properly executed Form 843 and filed directly with the Commissioner of Internal Revenue, Washington 25, D. C. The claim must be verified by a written declaration that it is made under the penalties of per-

jury. Two certified copies of the final judgment should be attached to the claim. If the judgment specifically provides for the recovery of costs, an itemized bill of such court costs paid, receipted by the clerk of the court, should also accompany the claim. If the case was appealed, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

§ 301.6402-7 Claim for payment of judgment obtained in the Court of Claims against the United States. A claim for the payment of a judgment rendered by the United States Court of Claims against the United States representing taxes, penalties, or other sums should be made on a properly executed Form 843 and filed directly with the Commissioner of Internal Revenue, Washington 25, D. C. The claim must be verified by a written declaration that it is made under the penalties of perjury. The claim shall be accompanied by a certificate of judgment issued by the clerk of the court and two copies of the printed opinion of the Court, if an opinion was rendered. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

§ 301.6403 Statutory provisions; overpayment of installment.

SEC. 6403. OVERPAYMENT OF INSTALLMENT. In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

§ 301.6403-1 Overpayment of installment. If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in section 6402 and the regulations thereunder.

§ 301.6404 Statutory provisions; abatements.

SEC. 6404. ABATEMENTS. (a) *General rule.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

- (1) Is excessive in amount, or
 - (2) Is assessed after the expiration of the period of limitation properly applicable thereto, or
 - (3) Is erroneously or illegally assessed.
- (b) *No claim for abatement of income, estate, and gift taxes.* No claim for abatement shall be filed by a taxpayer in respect

of an assessment of any tax imposed under subtitle A or B.

(c) *Small tax balances.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary or his delegate determines under uniform rules prescribed by the Secretary or his delegate that the administration and collection costs involved would not warrant collection of the amount due.

§ 301.6404-1 Abatements. (a) The district director may abate any assessment, or unpaid portion thereof, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitations applicable thereto, or if the assessment has been erroneously or illegally made.

(b) No claim for abatement may be filed with respect to income, estate, or gift tax.

(c) Except in case of income, estate, or gift tax, if more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to the district director, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 843 and shall be filed with the district director for the internal revenue district in which the tax was assessed. Form 843 shall be made in accordance with the instructions relating to such form.

(d) The Commissioner may issue uniform instructions to district directors authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

§ 301.6405 Statutory provisions; reports of refunds and credits.

SEC. 6405. REPORTS OF REFUNDS AND CREDITS (a) *By Treasury to Joint Committee.* No refund or credit of any income, war profits, excess profits, estate, or gift tax in excess of \$100,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary or his delegate, is submitted to the Joint Committee on Internal Revenue Taxation.

(b) *By Joint Committee to Congress.* A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each.

(c) *Tentative adjustments.* Any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of \$100,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary or his delegate shall determine the correct amount of the tax.

§ 301.6405-1 Reports of refunds and credits. Section 6405 requires that a report be made to the Joint Committee on Internal Revenue Taxation of proposed refunds or credits of any income, war profits, excess profits, estate, or gift tax in excess of \$100,000.

§ 301.6406 Statutory provisions; prohibition of administrative review of decisions.

SEC. 6406. PROHIBITION OF ADMINISTRATIVE REVIEW OF DECISIONS.

In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or nonallowance by the Secretary or his delegate of interest on any credit or refund under the internal revenue laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

§ 301.6407 Statutory provisions; date of allowance of refund or credit.

SEC. 6407. DATE OF ALLOWANCE OF REFUND OR CREDIT.

The date on which the Secretary or his delegate first authorizes the scheduling of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

§ 301.6407-1 Date of allowance of refund or credit. The date on which the district director, or an authorized certifying officer designated by him, first certifies the allowance of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

RULES OF SPECIAL APPLICATION

§ 301.6411 Statutory provisions; tentative carryback adjustments.

SEC. 6411. TENTATIVE CARRYBACK ADJUSTMENTS.

(a) *Application for adjustment.* A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback, provided in section 172 (b), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss from which the carryback results and within a period of 12 months from the end of such taxable year, in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

- (1) The amount of the net operating loss;
- (2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314 (a);
- (3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;
- (4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (3);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year of such loss, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

An application under this subsection shall not constitute a claim for credit or refund.

(b) *Allowance of adjustments.* Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) *Consolidated returns.* If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises, or for the preceding taxable year affected by such loss, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

§ 301.6411-1 Tentative carryback adjustments. For regulations under this section, see the Income Tax Regulations (CFR, Title 26, Internal Revenue, 1954, Part 1).

§ 301.6412 Statutory provisions; floor stocks refunds.

SEC. 6412. FLOOR STOCKS REFUNDS.

(a) Motor vehicles.

(1) *In general.* Where before April 1, 1955, any article subject to the tax imposed by section 4061 (a) or (b) has been sold by the manufacturer, producer, or importer, and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after April 1, 1955.

(2) *Definitions.* For purposes of this subsection—

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(B) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of con-

sumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) *Refunds to dealers.* Under regulations prescribed by the Secretary or his delegate, the refund provided by this subsection may be made to the dealer instead of the manufacturer, producer, or importer, if the manufacturer, producer, or importer waives any claim for the amount so to be refunded.

(4) *Reimbursement of dealers.* When the credit or refund provided for in this subsection has been allowed to the manufacturer, producer, or importer, he shall remit to the dealer to whom was sold the article in respect of which the credit or refund was allowed so much of that amount of the tax corresponding to the credit or refund as was included in or added to the price paid or agreed to be paid by the dealer.

(5) *Limitation on eligibility for credit or refund.* No person shall be entitled to credit or refund under this subsection unless (A) he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this subsection, and (B) claim for such credit or refund is filed with the Secretary or his delegate before July 1, 1955.

(b) Gasoline.

(1) *In general.* With respect to any gasoline taxable under section 4081, upon which tax (including floor stocks tax) at the applicable rate has been paid, and which, on April 1, 1955, is held and intended for sale by any person, there shall be credited or refunded (without interest) to the producer or importer who paid the tax, subject to such regulations as may be prescribed by the Secretary or his delegate, an amount equal to so much of the difference between the tax so paid and the amount of tax made applicable to such gasoline on and after April 1, 1955, as has been paid by such producer or importer to such person as reimbursement for the tax reduction on such gasoline, if claim for such credit or refund is filed with the Secretary or his delegate prior to July 1, 1955. No credit or refund shall be allowable under this subsection with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(2) *Limitation on eligibility for credit or refund.* No producer or importer shall be entitled to a credit or refund under paragraph (1) unless he has in his possession satisfactory evidence of the inventories with respect to which he has made the reimbursements described in such paragraph, and establishes to the satisfaction of the Secretary or his delegate with respect to the quantity of gasoline as to which credit or refund is claimed under such paragraph, that on or after April 1, 1955, such quantity of gasoline was sold to the ultimate consumer at a price which reflected the amount of the tax reduction.

(c) *Other laws applicable to certain floor stocks refunds.* All provisions of law, including penalties, applicable in respect of the taxes imposed under sections 4061 and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, be applicable in respect of the credits and refunds provided for in such subsections to the same extent as if such credits or refunds constituted overpayments of such taxes.

(d) *Sugar.* With respect to any sugar or articles composed in chief value of sugar upon which tax imposed under section 4501 (b) has been paid and which, on June 30, 1957, are held by the importer and intended for sale or other disposition, there shall be refunded (without interest) to such importer, subject to such regulations as may be prescribed by the Secretary or his delegate, an amount equal to the tax paid with

respect to such sugar or articles composed in chief value of sugar.

(e) *Cross reference.* For floor stocks refunds in case of certain alcohol and tobacco taxes, see sections 5063 and 5707.

§ 301.6412-1 Floor stocks refunds. For regulations under this section, see the Manufacturers' and Retailers' Excise Tax Regulations (Part 40 of this chapter).

§ 301.6413 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6413. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) *Adjustment of tax—(1) General rule.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Overpayments of certain employment taxes.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

(c) *Special refunds—(1) In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed \$3,600, the employee shall be entitled (subject to the provisions of section 31 (b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first \$3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer during any calendar year after the calendar year 1954, the wages received by him during such year exceed \$4,200, the employee shall be entitled (subject to the provisions of section 31 (b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first \$4,200 of such wages received.

(2) *Applicability in case of Federal and State employees and employees of certain foreign corporations—(A) Federal employees.* In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of

this subsection, be deemed a separate employer; and the term "wages" includes, for purposes of this subsection, the amount, not to exceed \$3,600 for the calendar year 1951, 1952, 1953, or 1954, or \$4,200 for any calendar year after 1954, determined by each such head or agent as constituting wages paid to an employee.

(B) *State employees.* For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(c) *Employees of certain foreign corporations.* For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121 (1) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121 (1); the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement entered into pursuant to section 3121 (1), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121 (1) has been paid to the Secretary or his delegate.

(d) *Refund or credit of Federal unemployment tax.* Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

[Sec. 5413 as amended by sec. 202 (a) (1), (b), Social Security Amendments of 1954]

§ 301.6413-1 Special rules applicable to certain employment taxes. For regulations under this section, see the Employment Tax Regulations (Part 31 of this chapter).

§ 301.6414 Statutory provisions; income tax withheld.

Sec. 6414. INCOME TAX WITHHELD.

In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

§ 301.6414-1 Income tax withheld. For regulations under this section, see the Income Tax Regulations (Part 1 of this chapter) and the Employment Tax Regulations (Part 31 of this chapter).

§ 301.6415 Statutory provisions; credits or refunds to persons who collected certain taxes.

Sec. 6415. CREDITS OR REFUNDS TO PERSONS WHO COLLECTED CERTAIN TAXES.

(a) *Allowance of credits or refunds.* Credit or refund of any overpayment of tax imposed by section 4231 (1), 4231 (2), 4231 (3), 4241, 4251, 4261, 4271, or 4286 may be allowed to the person who collected the tax and paid it to the Secretary or his delegate if such person establishes, under such regulations as the Secretary or his delegate may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund.

(b) *Credit on returns.* Any person entitled to a refund of tax imposed by section 4231 (1), 4231 (2), 4231 (3), 4241, 4251, 4261, 4271, or 4286 paid, or collected and paid, to the Secretary or his delegate by him may, instead of filing a claim for refund, take credit therefor against taxes imposed by such section due upon any subsequent return.

(c) *Refund of overcollections.* In case any person required under section 4231 (1), 4231 (2), 4231 (3), 4241, 4251, 4261, 4271, or 4286 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

(d) *Refund of taxable payment.* Any person making a refund of any payment on which tax imposed by section 4231 (1), 4231 (2), 4231 (3), 4241, 4251, 4261, 4271, or 4286 has been collected may repay therewith the amount of tax collected on such payment.

§ 301.6415-1 Credits or refunds to persons who collected certain taxes. For regulations under this section, see the Facilities and Services Excise Tax Regulations (Part 42 of this chapter).

§ 301.6416 Statutory provisions; certain taxes on sales and services.

Sec. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) *Condition to allowance.* No credit or refund of any overpayment of tax imposed by section 4231 (6) or 4281 or by chapter 31 (other than section 4041 (a) (2) or (b) (2)) or chapter 32 (except an overpayment of tax under paragraph (1) or (3) of subsection (b) of this section) shall be allowed unless the person who paid the tax establishes under regulations prescribed by the Secretary or his delegate—

(1) That he has not included the tax in the price of the article or service with respect to which it was imposed or has not collected the amount of the tax from the vendee; or

(2) Has repaid the amount of the tax to the purchaser (in case of retailers' taxes) or to the ultimate purchaser (in the case of manufacturers' taxes and the tax under section 4041 (a) (1) or (b) (1)) of the article or service, or, in any case within subsection (b) (2), has repaid or has agreed to repay the amount of the tax to the ultimate vendor of the article; or

(3) Has filed with the Secretary or his delegate the written consent of such purchaser, ultimate purchaser, or ultimate vendor, as the case may be, to the allowance of the credit or refund or has obtained the written consent of such ultimate vendor thereto.

(b) *Special cases in which tax payments considered overpayments.* Under regulations prescribed by the Secretary or his delegate credit or refund, without interest, shall be made of the overpayments determined under the following paragraphs:

(1) *Price readjustments.* If the price of any article in respect of which a tax, based

on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate or allowance, the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) *Specified uses and resales.* The tax paid under subchapter E of chapter 31 or chapter 32 in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) Resold for the exclusive use of any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, or, in the case of musical instruments embraced in section 4151, resold for the use of any religious or non-profit educational institution for exclusively religious or educational purposes;

(B) Used or resold for use for any of the purposes, but subject to the conditions, provided in section 4222;

(C) In the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid;

(D) In the case of lubricating oils, used or resold for nonlubricating purposes;

(E) In the case of unexposed motion picture films, used or resold for use in the making of newsreel motion picture films;

(F) In the case of articles taxable under section 4061 (b) (other than spark plugs, storage batteries, leaf springs, coils, timers, and tire chains), used or resold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061 (a));

(G) In the case of a communication, detection, or navigation receiver of the type used in commercial, military, or marine installations, resold to the United States for its exclusive use;

(H) In the case of gasoline, used in production of special motor fuels referred to in section 4041 (b).

(3) *Tax-paid articles used for further manufacture.*—If the tax imposed by chapter 32 has been paid with respect to the sale of—

(A) Any article (other than a tire, inner tube, or automobile radio or television receiving set taxable under section 4141) purchased by a manufacturer or producer and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under chapter 32 has been paid, or which has been sold free of tax by virtue of section 4220 or 4224, relating to tax-free sales;

(B) Any article described in sections 4142 and 4143 (b) purchased by a manufacturer or producer and used by him as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers have been sold by him to the United States for its exclusive use;

such tax shall be deemed an overpayment by such manufacturer or producer.

(c) *Credit for tax paid on tires, inner tubes, radios or television receiving sets.* If tires, inner tubes, or automobile radio or television receiving sets on which tax has been imposed under chapter 32 are sold on or in connection with, or with the sale of, an article taxable under section 4061 (a) (relating to automobiles, trucks, etc.), there shall (under regulations prescribed by the Secretary or his delegate) be credited, without interest, against the tax under section 4061 an amount equal to, in the case of an article taxable under paragraph (1) or (2) of subsection (a) of section 4061, the applicable per-

centage rate of tax provided in such subsections—

(1) Of the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 4071 (relating to tax on tires and inner tubes) or, in the case of automobile radio or television receiving sets, if such sets were taxable under section 4141; or

(2) If such tires, inner tubes, or automobile radio or television receiving sets were taxable under section 4218 (relating to use by manufacturer, producer, or importer), then of the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires, inner tubes, or sets are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary or his delegate.

(d) *Mechanical pencils taxable as jewelry.* If any article, on the sale of which tax has been paid under section 4201, is further manufactured or processed resulting in an article taxable under section 4001, the person who sells such article at retail shall, in the computation of the retailers' excise tax due on such sale, be entitled to a credit or refund, without interest, in an amount equal to the tax paid under section 4201.

(e) *Refund to exporter or shipper.* Under regulations prescribed by the Secretary or his delegate the amount of any tax imposed by subchapter E of chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(f) *Credit on returns.* Any person entitled to a refund of tax imposed by chapter 31 or 32 or section 4201, paid to the Secretary or his delegate may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter or section due on any subsequent return.

§ 301.6416-1 Certain taxes on sales and services. For regulations under this section, see the Manufacturers' and Retailers' Excise Tax Regulations (Part 40 of this chapter) and the Facilities and Services Excise Tax Regulations (Part 42 of this chapter).

§ 301.6417 Statutory provisions; coconut and palm oil.

SEC. 6417. COCONUT AND PALM OIL.

(a) *Sales to States or political subdivisions.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under section 4511, shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(b) *Exportation.* Upon the exportation to any foreign country or to a possession of the United States of any article, wholly or in chief value of an article, with respect to the processing of which a tax has been paid under subchapter B of chapter 37, the exporter thereof shall be entitled to a refund of the amount of such tax.

§ 301.6417-1 Coconut and palm oil. For regulations under this section, see the Regulations Relating to Miscellaneous Excise Taxes Payable by Return (Part 46 of this chapter).

§ 301.6418 Statutory provisions; sugar.

SEC. 6418. SUGAR.

(a) *Use as livestock feed or for distillation of alcohol.* Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Secretary or his delegate to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 4501 (a) with respect thereto.

(b) *Exportation.* Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 4501 (a) has been paid, the amount of such tax shall be paid by the Secretary or his delegate to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer; except that no such payment shall be allowed with respect to any manufactured sugar, or article, upon which, through substitution or otherwise, a drawback of any tax paid under section 4501 (b) has been or is to be claimed under any provisions of law made applicable by section 4504.

§ 301.6418-1 Sugar. For regulations under this section, see the Regulations Relating to Miscellaneous Excise Taxes Payable by Return (Part 46 of this chapter).

§ 301.6419 Statutory provisions; excise tax on wagering.

SEC. 6419. EXCISE TAX ON WAGERING.

(a) *Credit or refund generally.* No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary or his delegate, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary or his delegate written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary or his delegate, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) *Credit or refund on wages laid-off by taxpayer.* Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regu-

lations prescribed by the Secretary or his delegate; and no interest shall be allowed with respect to any amount so credited or refunded.

§ 301.6419-1 Excise tax on wagering. For regulations under this section, see the Wagering Tax Regulations (Part 44 of this chapter).

§ 301.6420 Statutory provisions; cross references.

SEC. 6420. CROSS REFERENCES.

(1) For limitations on credits and refunds, see subchapter B of chapter 66.

(2) For overpayment arising out of adjustments incident to involuntary liquidation of inventory, see section 1321.

(3) For overpayment in case of adjustments to accrued foreign taxes, see section 905 (c).

(4) For credit or refund in case of deficiency dividends paid by a personal holding company, see section 547.

(5) For refund, credit, or abatement of amounts disallowed by courts upon review of Tax Court decision, see section 7480.

(6) For abatement or refund of tax on transfers to avoid income tax, see section 1494 (b).

(7) For abatement or refund in case of tax on silver bullion, see section 4894.

(8) For overpayment in certain renegotiations of war contracts, see section 1481.

(9) For refund or redemption of stamps, see chapter 69.

(10) For abatement, credit, or refund in case of jeopardy assessments, see chapter 70.

(11) For treatment of certain overpayments as having been refunded, in connection with sale of surplus war-built vessels, see section 9 (b) (8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U. S. C. App. 1742).

(12) For restrictions on transfers and assignments of claims against the United States, see R. S. 3477 (31 U. S. C. 203).

(13) For set-off of claims against amounts due the United States, see the act of March 3, 1875, as amended by section 13 of the act of March 3, 1933 (47 Stat. 1516; 31 U. S. C. 227).

(14) For special provisions relating to alcohol and tobacco taxes, see sections 5011, 5044, 5057, 5063, 5705, and 5707.

EFFECTIVE DATE AND RELATED PROVISIONS

§ 301.7851 Statutory provisions; applicability of revenue laws.

SEC. 7851. APPLICABILITY OF REVENUE LAWS.

(a) *General rules.* Except as otherwise provided in any section of this title—

(b) Subtitle F.

(A) *General rule.* The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) * * * of this paragraph.

(B) *Assessment, collection, and refund.* Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section

6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credits allowed after the date of enactment of this title, and section 5777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

[F. R. Doc. 54-9867; Filed, Dec. 10, 1954; 11:03 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

[Docket No. AO 212-A9]

MILK IN THE MILWAUKEE, WISCONSIN, MARKETING AREA

PROPOSED AMENDMENTS TO TENTATIVELY APPROVED MARKETING AGREEMENT AND TO THE ORDER, AS AMENDED, REGULATING HANDLING

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Federal Building, Room 322, 517 East Wisconsin Avenue, Milwaukee, Wisconsin, beginning at 10:30 a. m., c. s. t., December 15, 1954.

The hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the handling of milk for the Milwaukee, Wisconsin, marketing area and to the proposed amendments set forth herein below, or modifications thereof, to the tentative marketing agreement as heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the said marketing area. Consideration will be given also to the question of whether such conditions require emergency action with respect to any or all amendments deemed necessary as the result of the hearing. The amendments proposed have not received the approval of the Secretary of Agriculture.

The following amendments have been proposed:

By Milwaukee Cooperative Milk Producers:

1. Amend Milwaukee order making Class I price the same as Chicago effective not later than January 1, 1955.

By Pure Milk Products Cooperative:

2. Consider realignment of Class I price differentials comparable to Order No. 41.

By the Dairy Division, Agricultural Marketing Service:

3. Make such other changes as may be required to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

No. 240—32

Copies of this notice of hearing and of the said order, as amended, may be procured from the Market Administrator, 956 North 12th Street, Milwaukee 3, Wisconsin, or from the Hearing Clerk, Room 1371, South Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: December 8, 1954, at Washington, D. C.

[SEAL]

F. R. BURKE,

Acting Deputy Administrator.

[F. R. Doc. 54-9796; Filed, Dec. 10, 1954; 8:50 a. m.]

[7 CFR Part 931]

[Docket No. AO-229-A2]

HANDLING OF MILK IN THE CEDAR RAPIDS-IOWA CITY MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO A PROPOSED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), hereinafter referred to as the "act," and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order amending the order, as amended, regulating the handling of milk in the Cedar Rapids-Iowa City marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed marketing agreement and order were formulated, was conducted at Cedar Rapids, Iowa, on October 13-14, 1954, pursuant to notice thereof which was issued on October 1, 1954 (19 F. R. 6480).

The material issues of record related to:

- (1) Changing from the market-wide pool to an individual-handler pool, or, in the alternative, providing separate pooling for Cedar Rapids and Iowa City;
- (2) Increasing the Class III price;
- (3) Broadening the definition of producer-handler to include a cooperative association which processes milk;
- (4) Increasing the level of the Class I price; and
- (5) Reducing the rate of the marketing service assessment.

Findings and determinations. Upon the evidence contained in the hearing record it has been found and concluded

that no amendments should be issued for the reasons set forth below:

1. The order should not be amended to provide either for an individual-handler pool, or for separate pools for Cedar Rapids and Iowa City.

These alternative proposals were submitted by the association of producers whose members all deliver their milk to the only plant receiving milk in Iowa City. Under these circumstances, the effect upon returns to these producers would be the same if either modification of the present market-wide pool were adopted. There are no other producers shipping to the Iowa City plant.

Several of the handlers in the marketing area have no facilities for handling milk in excess of their Class I requirements. Accordingly, they must depend on one of the two proprietary handlers who maintain such facilities, or on the cooperative association plant in Cedar Rapids to care for the excess supplies during the period of flush production and to furnish supplemental supplies for Class I use during the period of short production. The evidence shows that the plant of the cooperative association, which is strictly a manufacturing plant, handles substantial quantities of Grade A milk during the months of flush production but manufactured no Grade A milk during the month of September, 1954. The entire receipts of the association were transferred to other handlers for fluid use. In a market such as this where the majority of the handlers are not equipped to handle their share of the reserve supplies, an individual-handler pool would not contribute the same degree of stability to the market that is accomplished through the present marketwide pool.

The record evidence shows that receipts from producers in Iowa City during the periods of short production are substantially less than the Class I requirements of the Iowa City handler. Immediately prior to the date of the hearing, Iowa City was receiving approximately 20,000 pounds of milk per day from Cedar Rapids to fulfill its bottling requirements. It is thus evident that Cedar Rapids is performing the function of balancing the supply of Iowa City and that it carries, during the months of flush production, the reserve supplies of the entire marketing area. If separate pools were adopted, the Iowa City producers would receive approximately the Class I price for their deliveries on a year around basis while returns to the Cedar Rapids producers would be lowered substantially as a result of carrying the necessary reserves, not only for Cedar Rapids, but for Iowa City as well.

The present shortage of milk in Iowa City is largely the result of the conversion of the Iowa City plant to receipts of milk from only those producers who have installed bulk tanks on their farm. Those Iowa City producers who were unable or unwilling to install bulk tanks lost their market and in most instances transferred to Cedar Rapids. This has increased the amount of milk in Class III in the Cedar Rapids portion of the area.

The evidence shows that the handling of milk in the two cities is very closely interrelated. Not only are the producers for the two cities extensively intermingled, but handlers compete with each other for sales over a wide area. In addition, the Iowa City handler maintains a distribution plant in Cedar Rapids from which milk is disposed of on routes in that city, and one Cedar Rapids handler maintains a similar plant in Iowa City to service accounts located there.

Under the circumstances separate pooling in the two segments of the marketing area is not warranted.

2. No change should be made in the level of the Class III price at this time.

The proponents of the proposal to revise the Class III price are the same group of producers who proposed a separate pool for Iowa City. They do not operate a plant nor do the handlers they supply have manufacturing facilities. They urged that the formula be changed to correspond exactly to that provided in the order regulating the handling of milk in the Chicago, Illinois, marketing area for milk for similar use. Such a revision would result in an average increase in the Class III price of slightly more than 15 cents per hundredweight at the present level of dairy market prices.

The evidence in support of the change is devoted largely to an analysis of how much returns to producers would be increased if the proposal were adopted. The evidence fails to show that the facilities for handling excess supplies and the structure of the Cedar Rapids-Iowa City market are sufficiently similar to Chicago to warrant establishing identical prices for milk for manufacture.

Marketing conditions in the Cedar Rapids-Iowa City marketing area are not identical to those in Chicago. The amount of Grade A milk handled by plants such as that of the cooperative association in Cedar Rapids, is subject to great seasonal variations since they manufacture only that milk for which there is no Class I outlet. As noted above, substantial quantities of Grade A milk are handled during the periods of flush production, while no Grade A milk may be received during the period of short supply. The testimony of the manager of the association indicates that the plant returns a small profit on its overall operation. However, the plant receives non-Grade A milk which is used in its manufacturing. The average price paid farmers for this non-Grade A milk is somewhat less than the Class III price. It is not unlikely therefore that most, if not all, of the profit margin in the plant is derived from such non-Grade A receipts.

The one proprietary handler with manufacturing facilities who presented evidence stated that he considered the Class III operation a "break even" proposition at the present time, and that the manufacturing equipment sat idle approximately three months each year.

The record further shows that the Class III price is identical to that provided in the Quad Cities order and is higher than that fixed in the Dubuque

order. It is noted also that the average price paid by manufacturing plants in Iowa for milk is somewhat lower than the price proposed by the proponents. Since the present price appears to be comparable to the competitive prices generally prevailing in the area, the fact that it is lower than the price provided in the Chicago order does not constitute sufficient grounds for amendment.

3. A cooperative association of producers should not be considered a producer-handler.

This proposal was submitted on behalf of a few producers who were considering establishing a plant jointly to distribute their own milk in gallon jugs. They desired to be considered a producer-handler to avoid having their milk classified and priced under the order.

Such a provision would be contrary to the intent of the Agricultural Marketing Agreement Act of 1937, as amended. All the orders issued under the "act" require that a cooperative association which is a handler must comply with the terms and provisions of the order to which it is subject. This principle was affirmed by the Supreme Court in *United States v. Rock Royal Cooperative, Inc.* (307 U. S. 533).

It appears likely also, that, if a cooperative association which was a handler were freed from regulation under the order, it would seriously impair and perhaps completely destroy the effectiveness of the marketing order program. One of the fundamental requirements of a marketing order is the establishment of uniform classification and pricing of milk to all handlers subject to the order. Were a cooperative handler permitted to procure milk without regard to classification or price, proprietary handlers whose milk was classified and priced under the order, would very soon be placed in a completely untenable competitive situation. This could lead only to the complete disruption of orderly marketing conditions and the eventual breakdown of the marketing order program.

4. No change should be made in the level of the Class I price.

The proposal to increase the Class I price was abandoned by the proponents. Since no testimony was offered with respect to this proposal no consideration has been given to it.

5. No change should be made in the amount of the marketing service assessment.

The order fixes a maximum rate of assessment for marketing services which may be reduced or waived whenever income exceeds the amount necessary to perform the services required by the order. The evidence reveals that the assessment actually levied has been somewhat below the maximum since shortly after the order became effective. In addition, there have been several months when the assessment was waived entirely. Thus, it is clear that the amount actually assessed has been maintained at a level which provides only sufficient funds to operate the program and provide a reasonable reserve. Since conditions in the market could change rather rapidly, it is concluded that the maximum should not be reduced. Mainte-

nance of the present maximum rate will provide against contingencies which might necessitate levying a larger assessment than that actually in effect at the present time.

Findings and conclusions. Briefs were filed on behalf of the two producer associations and several handlers in the market. The briefs contained proposed findings of fact, conclusions and arguments with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinafter set forth. To the extent that such suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of facts found and stated in connection with the conclusions in this decision.

Filed in Washington, D. C., this 8th day of December 1954.

[SEAL] F. R. BURKE,
Acting Deputy Administrator.

[F. R. Doc. 54-9797; Filed, Dec. 10, 1954;
8:50 a. m.]

[7 CFR Part 943]

[Docket No. AO 231-A6]

MILK IN NORTH TEXAS MARKETING AREA

PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO THE ORDER, AS AMENDED, REGULATING HANDLING

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Skyline Room, Dallas Hotel, 312 S. Houston St., Dallas, Texas, January 18, 1955, at 10:00 a. m., for the purpose of receiving evidence with respect to marketing conditions and proposed amendments hereinafter set forth, or appropriate modifications thereof, to the tentative marketing agreement heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the North Texas marketing area. These proposed amendments have not received the approval of the Secretary of Agriculture.

The proposals set forth below relative to the enlargement of the marketing area raise the issue as to whether the provisions of the present order would tend to effectuate the declared policy of the act if applied to the marketing area as proposed to be extended, or if not, what modifications of the classification, pricing, payment, reporting and other administrative provisions of the order, as amended, are appropriate to effectuate the declared policy of the act.

Amendments to the order, as amended, have been proposed as follows:

By Cabell's, Inc., Dallas, Texas:

1. Amend § 943.6 by adding the Counties of Navarro, Henderson, Van Zandt, Gregg, Upshur, Smith, Cherokee, Rusk, Morris and Titus, all in the State of Texas.

By Lamar Creamery Company, Paris, Texas:

2. In § 943.6 add the following counties: Red River in the State of Texas and Choctaw and McCurtain in the State of Oklahoma.

By Foremost Dairies, Inc., Dallas, Texas:

3. Amend § 943.6 by adding the following counties: Navarro, Gregg, Smith, Van Zandt, Henderson and Upshur, all in the State of Texas.

By Foremost Dairies, Inc. of Dallas, and Fort Worth; Cabells; Oak Farms Dairy of Dallas and Fort Worth; Schepp's Dairy, Dallas; Brooks Dairy, Denton; Metzgers Dairy, Dallas; and Borden's, Dallas:

4. Amend § 943.51 so that the first part of paragraph (a) shall read as follows:

(a) *Class I milk.* The basic formula price rounded to the nearest one-tenth cent for the preceding month, plus \$1.80 for each of the months of March, April, May and June, and plus \$2.00 for all other months, subject to the following:

5. Amend that part of § 943.51 pertaining to the supply-demand formula so that: An adjustment indicated by the supply-demand formula shall be a factor determining the differential added to the basic formula price and the price as thus determined shall be promulgated and publicized as an adjusted differential.

6. Amend § 943.80 to read as follows:

§ 943.80 *Computation of daily average base for each producer.* For the months of March through June of each year the market administrator shall compute a daily average base for each producer as follows, subject to the rules set forth in § 943.81:

(a) Divide the total pounds of milk received by a handler(s) from such producer during the months of September through December immediately preceding by the number of days, not to be less than 90, during the period(s) within which such producer made deliveries of milk in such months.

7. Amend § 943.51 paragraph (b) to read as follows:

(b) *Class II milk.* For each of the months of March, April, May and June, the price computed pursuant to § 943.50 (c), rounded to the nearest one-tenth cent; for each of the months of July through February, the price computed pursuant to § 943.50 (b) less 16 cents or the price computed to § 943.50 (c), whichever is higher, rounded to the nearest one-tenth cent; and for each of the other months of the year, the price computed pursuant to § 943.50 (b) or the price computed pursuant to § 943.50 (c), whichever is higher, rounded to the nearest one-tenth cent.

8. Amend § 943.44 Transfers, paragraph (c) and paragraph (e) (3) to read as follows:

(c) As Class I milk, if transferred or diverted in the form of milk or skim milk to an unapproved plant located (1) more than 400 miles from Dallas, Texas, by shortest highway distance as determined by the market administrator and (2) outside the Counties of Barry, Cedar, Greene, Lawrence, Polk, Newton, and McDonald in the State of Missouri, and Benton in the State of Arkansas.

(3) In the event that the unapproved plant received other source milk during the month that the transfer or diversion took place and its local producer milk and opening inventory was less than its Class I sales, then and in that event the other source milk shall be considered a Class I use only to the extent that such Class I use was available after other source milk transferred and diverted to such unapproved plants from a greater distance has first been allotted to such Class I use.

9. Amend § 943.52 paragraph (b) to read as follows:

(b) *Class II milk.* For each of the months of March through June, multiply such price for the current month by 1.08 and for each month from July through February, multiply such price for the current month by 1.15.

10. Amend § 943.30 (a) to read as follows:

(a) The quantities of skim milk and butterfat contained in milk received from producers and, for the months of March through June, the aggregate quantities of base milk and excess milk;

11. Amend § 943.31 (a) to read as follows:

(a) The total pounds and the average butterfat test of milk received from each producer and cooperative association, the number of days, if less than the entire month, for which milk was received from such producer, and, for the months of March through June, such producer's deliveries of base milk and excess milk;

By Producers' Creamery Company, Springfield, Missouri:

12. Delete all of § 943.7 (b) and substitute in lieu thereof the following:

(b) A milk plant approved and under the routine inspection of the appropriate health authority in the marketing area from which milk from producers is received, weighed and commingled and from which plant 50 percent or more of the receipts of milk is moved during the month to plants specified in paragraph (a) of this section and assigned as reserve supply credit pursuant to § 943.17 (a): *Provided, however,* That such a pool plant may, after compliance with subparagraphs (1) and (2) of this paragraph, upon written application to the market administrator on or before February 1st of any year be designated as an approved plant until the end of any

month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible to re-establish itself under the terms of subparagraph (1) and (2) of this paragraph.

(1) Such a plant shall ship to plants specified in paragraph (a) of this section, and have assigned as reserve supply credit pursuant to § 943.17 (a) at least 15 percent of its producer receipts during two of the three months August, December or January; 50 percent of its producer receipts during the month of September; 75 percent of its producer receipts during the month of October; and 35 percent of its producer receipts during the month of November, and shall,

(2) Give notice to the market administrator of its willingness to ship to a milk plant specified in paragraph (a) of this section and have assigned as a reserve supply credit pursuant to § 943.17 (b) at least 80 percent of its producer receipts during each delivery period August through January, inclusive.

13. Delete § 943.17 and substitute in lieu thereof the following:

§ 943.17 *Reserve supply credit.* The hundredweight of reserve supply credit that may be assigned to milk moved to a plant described in § 943.7 (a) shall be calculated according to paragraph (a) of this section and the hundredweight of reserve supply credit that may be assigned to milk offered to a plant described in § 943.7 (a) shall be calculated in accordance with paragraph (b) of this section.

(a) From the total hundredweight of milk disposed of as Class I milk from the transferee plant during the month deduct Class I sales to other handlers and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from plants described in § 943.7 (b) unless the operator of the transferee plant notifies the market administrator in writing of a different assignment on or before the 7th day after the end of the month.

(b) (1) Determine for the delivery period, the amount of milk that the plant has given written notice of its willingness to ship to a plant specified in § 943.7 (a) if such notice has been received by the market administrator at least nine (9) business days prior to date of offer. Such notice shall contain in the specific data on which the milk will be available, the amount of milk and the approximate butterfat content thereof, the price and terms of sale and if such offer is the entire supply of milk for the particular day. Only the amount of milk offered by said notice shall be credited to the offerer as is not in excess of the amount received from producers on said day: *Provided, however,* Any plant which has firm commitments for specific amounts of milk on certain days of the delivery period may indicate their commitments in the notice of willingness to

ship and the market administrator shall allow the actual amount of milk shipped under such commitments to constitute a portion of the reserve supply credit required under this paragraph.

(2) Subtract from the amount computed above an amount of milk determined by the market administrator to constitute a refusal by the offering plant or its agent to a handler accepting the offer. Such a refusal shall be considered valid if the purchasing plant has indicated acceptance of his willingness to accept such offer at least four days prior to the date on which such milk is available for purchase and if the offering plant refuses to sell and deliver the milk to the handler accepting the offer. The purchasing plant shall report such refusal to the market administrator who shall verify such refusal to sell by communication with the offering plant or its agent. If upon subsequent audit and investigation the market administrator determines that such milk has not been shipped to a regulated plant serving the marketing area the offer for said date shall be considered null and void, and shall be subtracted from the amount offered for sale.

14. Amend § 943.44 to provide for a Class II classification for fluid cream transferred or diverted as an ungraded product to plants beyond the surplus manufacturing area.

15. Delete all of § 943.61 (b).

16. Add a § 943.5 to read as follows:

§ 943.5 *Location differential to handlers.* With respect to skim milk and butterfat contained in milk received from producers at an approved plant defined under § 943.7 (b) located outside the marketing area that is classified as Class I milk the price per hundred-weight shall be reduced by the amount set forth in the following schedule according to the actual road mileage as determined by the market administrator from the plant where the milk is received from producers or the plant from which the milk is diverted to the closest edge of the marketing area.

Mileage:	Allowance (cents)
Not more than 20 miles.....	6
For each additional 10 miles or major fraction thereof.....	1.75

17. Add a § 943 to read as follows:

§ 943 *Location differentials to producers.* In making payment for milk received from producers pursuant to § 943.90 uniform price per hundred-weight for milk received at approved plants defined under § 943.7 (b) located outside of the marketing area shall be reduced by the amount set forth in the following schedule according to the actual road mileage as determined by the market administrator from the plant where the milk is received from producers or the plant from which the milk is diverted to the closest edge of the marketing area.

Mileage:	Allowance (cents)
Not more than 20 miles.....	6
For each additional 10 miles or major fraction thereof.....	1.75

By The North Texas Producers Association, Arlington, Texas:

18. Add a new paragraph to § 943.7 as follows:

(c) A milk plant located within the marketing area operated by a cooperative association, and approved by any health authority having jurisdiction in the marketing area, for the handling of milk which may be disposed of as Grade A in such area.

19. Add a new paragraph to § 943.9, as follows:

(c) Any cooperative association with respect to the milk of any producer which it causes to be delivered to an approved plant of any handler for the account of such association and for which such association receives payment.

20. Amend § 943.10 by adding the following proviso at the end of the third sentence thereof: "Provided, That 'producer' shall not include any such person whose milk is caused to be diverted to an unapproved plant outside the marketing area for more than fifteen days during any month of August through January."

21. Amend § 943.12 to read as follows:

§ 943.12 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 943.41 (a), except (1) such products approved by the appropriate health authority for distribution as Class I milk in the marketing area which are received from approved plants, or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 943.41 (b) (1) from any source (including those from a plant's own production), which are reprocessed or converted to another product in the plant during the month.

22. Amend § 943.44 (c) to read as follows:

(c) As Class I milk, if transferred or diverted in the form of milk or skim milk to an unapproved plant located outside the marketing area or outside the Counties of Erath, Titus, Runnels, Fayette, and Cherokee in the State of Texas, Carter, Comanche, Grady and Muskogee in the State of Oklahoma, Barry, Cedar, Greene, Lawrence, Polk, Newton and McDonald in the State of Missouri, and Benton in the State of Arkansas.

23. Add at the end of § 943.44 (e) (3) (ii) the following proviso: "Provided, That if skim milk or butterfat is transferred or disposed of in the form of cream from such unapproved plant it shall be allocated to Class II milk, except if transferred during any month from July through November to a milk plant disposing of milk on routes."

24. Add at the end of § 943.45 the following proviso: "Provided, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such

product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids."

25. Amend § 943.80 to read as follows:

§ 943.80 *Computation of daily average base for each producer.* For the months of February through June of each year the market administrator shall compute a daily average base for each producer as follows, subject to the rules set forth in § 943.81:

(a) Divide the total pounds of milk received by a handler(s) during the months of October through December immediately preceding by the number of days, not to be less than 82, during the periods within which such producer made deliveries of milk in such months.

26. Amend § 943.81 to read as follows:

§ 943.81 *Base rules.* (a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the base-forming period.

(b) An entire base may be transferred by notifying the market administrator in writing before the last day of any month that such base is to be transferred to the person named in such notice: *Provided*, That, if a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders.

27. Add a new § 943.96, as follows, and renumber existing §§ 943.96 through 943.111 accordingly:

§ 943.96 *Overdue accounts.* Any unpaid obligation of a handler pursuant to § 943.90, § 943.93, § 943.95, and § 943.97 (based on revised section numbers) shall be increased one-half of one percent on the third day next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

By the Dairy Division, Agricultural Marketing Service:

28. Delete § 943.61 and substitute therefor the following:

§ 943.61 *Plants subject to other Federal orders.* A plant specified in paragraph (a) or (b) of this section shall be considered as an unapproved plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to §§ 943.30 and 943.31) and allow verification of such reports by the market administrator:

(a) Any approved plant qualified pursuant to § 943.7 (a) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the Secretary determines that more Class I milk is disposed of from such plant on routes to retail or wholesale outlets in the North Texas area than is so disposed of in the marketing area regulated pursuant to such other order.

(b) Any approved plant qualified pursuant to § 943.7 (b) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant qualified as an approved plant pursuant to the provisions of § 943.7 (b) during the preceding August through January period.

29. Amend § 943.94 by adding the following: "And provided further, That any money due a handler pursuant to this section shall be reduced by the amount of any unpaid balances due the market administrator from such handler pursuant to §§ 943.93, 943.95, 943.96, or 943.97."

30. Amend § 943.73 so that the deduction for the producers-settlement fund reserve is made with respect to all producer milk rather than base milk.

31. Review any or all provisions of Order No. 43 in light of proposals to amend the definition of the North Texas marketing area.

Copies of this notice of hearing, and the order now in effect, may be procured from the market administrator, 6619 Denton Drive, Dallas, Texas, or the Hearing Clerk, United States Department of Agriculture, Room 1371, South Building, Washington 25, D. C., or may be there inspected.

Dated: December 8, 1954, Washington, D. C.

[SEAL]

F. R. BURKE,
Acting Deputy Administrator.

[F. R. Doc. 54-9812; Filed, Dec. 10, 1954;
8:53 a. m.]

CACHE VALLEY LIVESTOCK AUCTION CO. ET AL.

POSTING OF STOCKYARDS

The Secretary of Agriculture has information that the Cache Valley Livestock Auction Company, Preston, Idaho, the Hayes Sales Yard, Nampa, Idaho, and the Meridian Sales Yard, Meridian, Idaho, are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 202), and should be made subject to the provisions of that act.

Therefore, notice is hereby given that the Secretary of Agriculture proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), as is provided in section 302 of that act. Any interested person who desires to do so may submit, within 15 days of the publication of this notice, any data, views or arguments, in writing, on the proposed rule to the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C.

Done at Washington, D. C., this 7th day of December 1954.

[SEAL]

DAVID M. PETTUS,
Acting Director,
Agricultural Marketing Service.

[F. R. Doc. 54-9813; Filed, Dec. 10, 1954;
8:53 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 11228; FCC 54-1503]

PRACTICE AND PROCEDURE

DISCLOSURE OF PATENT POSITIONS IN RULE MAKING PROCEEDINGS

1. Notice is hereby given of the institution of rule making in the above-entitled matter.

2. Consideration is being given to the matter of the best way of the Commission keeping itself informed as to the possible existence of patent questions in connection with particular rule making proceedings.

3. It is believed that the public interest would be served by the securing of advance information as to the possible existence of special patent questions in connection with rule making proceedings looking towards the adoption of new or modified rules or standards relating to the apparatus or equipment required or authorized to be used in any communications service, or to the establishment of technical or other standards determinative in whole or in part of equipment or apparatus to be used in such a service.

4. It is further believed that the information available may not, in and of itself, be sufficient to advise as to the patent interest of parties participating in rule making proceedings, or as to the specific patents, if any, known or believed to read on such proposed additions or changes in the Commission's rules and standards. Accordingly, it is believed that such information should be provided by requiring persons petitioning for or commenting in such rule making proceedings to specify as part of their written pleadings whether they own or have the right to sub-license patents reading on or otherwise related to any new or revised standards proposed in such proceedings or any apparatus required or authorized thereby, as set forth in the proposed rule set forth below.

5. Authority for adoption of such rules stems from sections 4 (i) and (j), 218 and 303 (e), (g) and (r), respectively.

6. Any interested party who is of the opinion that the amendment proposed herein should not be adopted or should not be adopted in the form proposed herein may file with the Commission on or before January 15, 1955, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of

the time and place of such hearing or oral argument will be given.

7. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: December 3, 1954.

Released: December 8, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

It is proposed to amend Part 1 of the rules by adding a new § 1.704 to read as follows:

§ 1.704 *Disclosure of patent positions in rule making proceedings.* Any person filing a petition requesting the institution of rule making proceedings looking towards the adoption of new or modified rules or standards relating to the apparatus or equipment required or authorized to be used (both for transmission or reception) in any communications service, or to the establishment of technical or other standards in whole or in part determinative of the equipment or apparatus required or authorized to be used in such a communications service, and any person filing comments directed to a notice of proposed rule making looking towards the adoption of such new or modified rules or standards, must, as part of such filing, include an express statement as to whether such person owns or has the right to license patents covering in whole or in part any equipments or apparatus which would be affected by the adoption or non-adoption of the proposed rule or standard and, if such statement is in the affirmative, must include a description of the nature of such patent interest.

[F. R. Doc. 54-9817; Filed, Dec. 10, 1954;
8:54 a. m.]

[47 CFR Part 25]

[Docket No. 10090; FCC 54-1502]

PATENTS

FILING OF INFORMATION

In the matter of promulgation of rule governing the preparation and filing of patent reports semi-annually.

1. On November 29, 1951, the Commission released its notice of proposed rule making in the above proceeding. The rule proposed was made an appendix to the notice and it was designated for reference as § 25.1 of the Commission's rules and regulations. The notice specified that comments respecting the rule proposed must be filed on or before January 5, 1952.

2. On January 3, 1952, the Commission extended the time for filing the comments from January 5 to January 31, 1952. This was in response to the receipt of a large number of letters and telegrams requesting such an extension. It appeared from many of the comments filed that the purposes of the Commission for requiring the statements, data and documents called for by the proposed rule were not clearly understood. Ac-

cordingly, the Commission, on January 17, 1952, released a Second Supplementary Notice in which the purposes of the material called for were briefly explained as related to the Commission's duties and functions arising under sections 218, 303 (o), 303 (g), 311, 313 and 602 (d) of the Communications Act of 1934, as amended.

3. Subsequent to the Second Supplementary Notice, released January 17, 1952, the Commission received requests for further extension of time within which to file comments. On January 23, 1952, the time was again extended for filing comments from January 31 to February 21, 1952. The notice providing for this extension stated: "Any parties who have heretofore filed requests for extension of time beyond the date of February 21 may file a renewal of these requests specifying reasons why the date of February 21 does not afford adequate time." No further requests for extension of time were filed.

4. A great many comments were filed in this proceeding, many of them adverse to the adoption of any type of rule such as had been proposed. A number of the comments challenged the basic jurisdiction of the Commission to secure the requested information. With respect to these comments we believe that little need be said. As we pointed out in the Second Supplementary Notice, information as to the patent situation in the communications services subject to the Commission's regulatory and licensing jurisdiction may, under the sections of the act there enumerated, be secured to the extent that it is of and to the Commission in the performance of its duties—particularly its responsibilities in both the common carrier and radio fields to encourage the larger and more effective use of radio and other telecommunications media in the public interest. Nor is there any question that the patent situation and the practices of owners and licensors of patents is an increasingly important element of such development. In recognition of this fact the Commission in recent years has increasingly found it necessary to secure detailed patent information; it is the objective of the present proposal to standardize the reporting of this information so that the Commission can study and analyze the data in advance of its application to particular problems and thus avoid unnecessary delay.

5. Nor do we believe that the Commission's proposal can properly be characterized, as some of the comments have attempted to do, either as an improper "fishing expedition" or as an unnecessary duplication of the activities of the Antitrust Division of the Department of Justice. The information presented to the Commission in the course of previous individual proceedings as well as from other sources, in our opinion clearly establishes the importance of securing regular information, of a type not otherwise available, as to the actual licensing practices and policies of the persons subject to our jurisdiction with respect to the communications services which Congress has given this Commission the responsibility to regulate. Nor

is the question by any means limited to inquiries as to whether such practices or policies are consistent with the anti-trust laws—the area in which this Commission must share federal responsibility with the Department of Justice. On the contrary we believe it clear that this Commission has an independent responsibility to consider relevant patent matters in performing its responsibilities in the common carrier field, and in the establishment of appropriate technical and other necessary standards in the radio field generally.

6. Turning to the comments relating to the specific provisions of the proposed rule, we cannot agree that persons who are licensees of the Commission in one or more of the safety or special radio services only should be exempted from filing any regular patent reports. We recognize that in the past the patent questions with which the Commission has been obliged to contend have been largely limited to the common carrier and radio broadcast fields. But the ever increasing importance of the safety and special radio services, the close interrelation between technical developments in all radio services, and the fact that persons holding licenses in one type of service in many instances own or have the right to sublicense patents applicable to other services, all in our opinion, make inadvisable any limitation of the types of Commission licensees who should report as to their patent operations to the Commission. The delimitation of the exact scope of these reports, set forth below, will, we believe, avoid imposing any unnecessary burdens on these as well as other parties required to file reports. And, in view of our more limited information with respect to the safety and special radio services, we shall periodically review these reports to determine whether inclusion of persons who are licensees in these services only should be continued.

7. It has been suggested by several of the commenting parties that the requirement of reporting all patents in use which a person owns or has the right to sublicense would impose an extremely difficult, if not impossible, task on the reporting persons of securing complete information as to actual use by sub-licensees. We agree, and believe that the objectives of the Commission proposal can be substantially achieved by limiting the information to be reported to patents which are "known or believed to be used." Similarly, at the suggestion of several of the parties, we are modifying the language of the rule to make clear that the information required to be filed is that relating solely to the use of patents in the communications services which are subject to regulation by this Commission.

8. Some of the comments objected to the statement in the notice of proposed rule making that the list of patents in use required to be filed by the rule be made public. (Some comments erroneously assumed that all material filed would be made public. Such is not the case; only the list of patents known or believed to be in use will be made available for public inspection.) We do not

believe that the argument that making such information public is an unwarranted invasion of private rights is sound; on the contrary Congress has provided by law (35 U. S. C. 49) for marking of patents used on products. And we believe that making this information available for inspection will aid in development activities in the communications field by avoiding fears of inadvertent infringement and aiding experimenters in determining what patent licenses they may be required to secure.

9. Because of the importance of this proceeding, as evidenced by the many comments which have been filed, we believe the public interest would be served before final adoption of this report and the attached modified rule to afford the persons who commented in the proceeding an opportunity for oral argument. Accordingly, oral argument on this proposed report will be held at 10 a. m. on February 1, 1955, at the Commission's offices in Washington, D. C. Parties who have previously filed comments and wish to appear at the oral argument must file notices of appearance on or before January 3, 1955.

Adopted: December 3, 1954.

Released: December 8, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

§ 25.1 Filing of patent information.
(a) Any carrier subject to the provisions of Title II of the Communications Act or any radio station licensee, or any person who controls, or is controlled by any such carrier or station licensee, who owns one or more unexpired United States patents, or who has the right to license one or more such patents which are owned by others, i. e., the right to sublicense, which he knows or believes to be in use in systems, equipment or devices for one or more communication services regulated or authorized by the Commission under provisions of the Communications Act of 1934, as amended, shall prepare and file in duplicate with the Commission on or before the 31st of March of each year, reports, verified under oath (or affirmed according to law), and covering with respect to the preceding calendar year, the following information:

(1) A table listing in numerical order the numbers of the unexpired U. S. patents the person reporting owns or has the right to sublicense which he knows or believes to be in use in systems, equipment or devices for one or more communication services, regulated or authorized by the Commission,¹ and showing, as to each patent listed, the rights of the "person" reporting, i. e., ownership or sublicense rights, the United States Patent Office classification and subclassification numbers, the filing and expiration dates, and the specific purpose or purposes for which said patent is known or believed to be in use.

(2) A table listing the names and addresses of all persons, who hold licenses

¹ Dissenting statement of Commissioner Doerfer in which Chairman McConaughy concurs, filed as part of original document.

from the person reporting, for the manufacture, sale or use in any communication service or services regulated or authorized by the Commission under one or more of the patents reported under subparagraph (1) of this paragraph¹, showing as to each such license, the patents known or believed to be in use thereunder by giving the patent numbers in numerical order, stating whether said patents are licensed on an exclusive, non-exclusive or sublicensing basis, whether they are licensed for manufacture, sale or use, the specific purpose or purposes for which they are known or believed to be used, and the commencement and termination dates of the period for which said patents are licensed.

(3) All agreements which the person filing the report has with persons located in the United States or in foreign countries involving the use or licensing of one or more of the patents reported under subparagraph (1) of this paragraph, and covering or relating to any communication service or services regulated or authorized by the Commission.² Where a standard form of license-agreement is used, only sample copies need be filed.³

(4) A statement setting forth the patent licensing policy of the person reporting respecting the patents listed under subparagraph (1) of this paragraph.

[F. R. Doc. 54-9818; Filed, Dec. 10, 1954; 8:54 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 250]

ALLOCATION OF CONSOLIDATED INCOME TAXES AMONG MEMBER COMPANIES OF REGISTERED HOLDING COMPANY SYSTEMS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to revise paragraph (b) (6) of § 250.45 (Rule U-45) under the Public Utility Holding Company Act of 1935 governing the allocation of consolidated income taxes among the constituent companies of registered holding company systems.

Section 12 (b) of the act prohibits any registered holding company or subsidiary company thereof from lending or extending credit to or indemnifying any company in the same holding company system in contravention of such rules or regulations or orders as the Commission may deem necessary. Section 250.45 (b) (6) (Rule U-45), promulgated by the Commission under section 12 of the act, exempts from the general declaration

¹ Exclusive of systems equipment or devices used only in connection with Parts 15 or 18 of this chapter or in experimentation under Part 5 of this chapter.

² Copies of agreements previously filed with the Commission by any "person" coming within the provisions of this section, may by reference, be made a part of an annual report being filed.

requirements of § 250.45 (Rule U-45) a loan or extension of credit or an agreement of indemnity arising out of a consolidated income tax return filed by a holding company and its subsidiaries, provided, among other things, that the top company filing the consolidated return may allocate the consolidated tax liability among the several members of the group in amounts not exceeding, as to any company, that percentage of the consolidated tax liability which the income tax liability of such company on a separate return basis would be of the aggregate income tax liabilities of the individual companies based upon separate returns.

On March 12, 1953, the Commission invited all interested persons to submit comments and recommendations for the modification of § 250.45 (b) (6) (Rule U-45). (Holding Company Act Release No. 11761). Pursuant to this invitation, varying comments and suggestions were received from holding companies, regulatory bodies, and others; and following a careful study of such comments and suggestions the Commission's Division of Corporate Regulation submitted to the Commission a proposed amendment to § 250.45 (b) (6) (Rule U-45) providing for the distribution of consolidated income taxes on the basis of sources of system income rather than on the basis of separate return tax liabilities. This proposal was published by the Commission on November 9, 1953, together with an invitation to all interested persons to submit written data, views, and comments thereon. (Holding Company Act Release No. 12206-X.) Pursuant to this second invitation, numerous written comments were received by the Commission; and on December 22, 1953, the Commission held a public hearing at which representatives of one state and one municipality appeared in opposition to the proposal and representatives of several holding companies spoke in support of its adoption. On December 30, 1953, the Commission announced that it would not adopt the proposal contained in Holding Company Act Release No. 12206-X, but was directing its Division of Corporate Regulation to make further studies on the subject of tax allocation in holding company systems. (Holding Company Act Release No. 12288.)

In response to this directive, the Division of Corporate Regulation has submitted to the Commission a proposed revision of § 250.45 (b) (6) (Rule U-45), which would give holding company systems, for purposes of the rule, the choice of either of two tax allocation methods contained in and prescribed by the Internal Revenue Code of 1954 ("54 Code"), which was approved by the President and became law on August 16, 1954. These two methods of allocation are contained in sections 1552 (a) (1) and (a) (2) of the '54 Code and read as follows:

1552 (a) (1): The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

1552 (a) (2): The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

The method prescribed by section 1552 (a) (1) of the '54 Code is the "source-of-income" method; while that prescribed by section 1552 (a) (2) is based on the "separate-return-tax" relationship, which is about the same as the method prescribed by the present § 250.45 (b) (6) (Rule U-45). The revised rule proposed by the Division of Corporate Regulation embodying the foregoing two methods of allocation would also provide that in no event shall the tax allocated to any subsidiary company exceed such company's separate return tax liability, and that any such "excess" taxes that might otherwise be allocated to a particular subsidiary shall be distributed among the other members of the group (including the parent company) in proportion to such other members' tax savings by reason of the consolidation.

As herein proposed to be revised, paragraph (b) (6) of § 250.45 (Rule U-45) would read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies. * * *

(b) Exceptions. The following transactions shall be exempt from the declaration requirements of this section:

(6) A loan or extension of credit or an agreement of indemnity arising out of a consolidated tax return filed by a holding company (or other parent company) and its subsidiaries: *Provided*, That the consolidated tax liability of the companies joining in such consolidated tax return shall be allocated among the members of the group in accord with either of the methods of allocation prescribed by subparagraphs (a) (1) and (2) of section 1552 of the Internal Revenue Code of 1954: *And further provided*:

(i) That the tax allocated to each subsidiary company shall not exceed the amount of tax of such company based upon a separate return computed as if such company had always filed its tax returns on a separate return basis; and

(ii) That any excess of liability over a separate return tax which would be allocated to a subsidiary company but for subdivision (i) of this subparagraph shall be apportioned among the other members of the group, including the holding company (or other parent company), in direct proportion to the reduction in tax liability resulting to such members as measured by the difference between their tax liabilities computed on a separate return basis and their allocated portion of the consolidated tax liability.

It appearing to the Commission that the written comments, views, data, and suggestions heretofore received in response to its two previous invitations concerning revision of § 250.45 (b) (6) (Rule U-45), referred to above, as well

as the oral presentations made at the public hearing on December 22, 1953, are relevant to the revised rule presently proposed by the Division of Corporate Regulation, the Commission, in connection with any action it may take on the presently proposed rule, will take into consideration all of such comments and views previously received.

Any interested person desiring to submit in writing his views and comments, and any interested person desiring to supplement, in writing, his previously submitted views and comments, concerning the presently proposed revision of § 250.45 (b) (6) (Rule U-45), is invited to do so on or before December 21, 1954. All such communications should be addressed to the Secretary, Securities and Exchange Commission, Washington 25, D. C.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

DECEMBER 2, 1954.

[F. R. Doc. 54-9794; Filed, Dec. 10, 1954;
8:50 a. m.]

[17 CFR Part 250]

EMPLOYEE STOCK OPTIONS

TERMINATION OF PROCEEDINGS

The Commission, on February 12, 1954, in Holding Company Act Release No.

12354, gave notice that it was considering adopting a new § 250.51 (Rule U-51) under the Public Utility Holding Company Act of 1935. This proposed new rule would have prescribed standards for employee stock option plans for registered holding companies and their subsidiaries. Various views and comments on the proposed rule were submitted in writing and orally presented at a public hearing held on April 8, 1954, before the Commission.

Previously, on May 15, 1953, the then Director of the Commission's Division of Corporate Regulation, acting upon direction of the Commission, had sent a letter to each registered holding company, stating that the Commission would give expeditious consideration to stock purchase plans meeting certain prescribed standards which, in effect, would have made such plans stock option plans.

Today the Commission announced that after thorough consideration of the entire record it had decided not to adopt the proposed rule. It also announced withdrawal of the May 15, 1953, letter.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

DECEMBER 6, 1954.

[F. R. Doc. 54-9793; Filed, Dec. 10, 1954;
8:49 a. m.]

Defense Lending Division, both of which shall be under the supervision of Assistant Secretary Robbins and shall perform such functions as he may assign to them.

2. There are transferred to Assistant Secretary Robbins all of the functions of the Secretary of the Treasury under section 409 of the Federal Civil Defense Act of 1950 and section 302 of the Defense Production Act of 1950, as amended. Assistant Secretary Robbins may make provision for the performance of any of these functions by subordinates in the Office of Production and Defense Lending or the Defense Lending Division.

3. The Office of Defense Lending established by Treasury Department Order No. 181 is abolished.

4. This order shall be effective December 7, 1954.

Dated: December 7, 1954.

[SEAL] G. M. HUMPHREY,
Secretary of the Treasury.

[F. R. Doc. 54-9810; Filed, Dec. 10, 1954;
8:53 a. m.]

APPLICATIONS FOR LOANS UNDER SECTION 409 OF THE FEDERAL CIVIL DEFENSE ACT OF 1950 AND FOR LOANS UNDER SECTION 302 OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

PLACE OF FILING

Notice is hereby given that applications for loans under section 409 of the Federal Civil Defense Act of 1950 and applications for loans under section 302 of the Defense Production Act of 1950, as amended, should, until further notice, be filed with the Treasury Department, Defense Lending Division, 811 Vermont Avenue NW., Washington 25, D. C.

Dated: December 7, 1954.

[SEAL] G. M. HUMPHREY,
Secretary of the Treasury.

[F. R. Doc. 54-9811; Filed, Dec. 10, 1954;
8:53 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Area Order 2]

AREA CADASTRAL ENGINEERING OFFICER
REDELEGATION OF AUTHORITY REGARDING
CADASTRAL SURVEYS

Pursuant to the authority contained in section 1.1 of Order No. 541 of the Director, Bureau of Land Management, and subject to the limitations contained therein, the Area Cadastral Engineering Officer may take the following actions:

a. Perform all functions pertaining to the survey and resurvey of public lands within the area pursuant to section 453 of the Revised Statutes (43 U. S. C. sec. 2), except the acceptance of plats of survey and resurvey.

b. Appoint mineral surveyors and approve and accept their bonds pursuant to section 2334 of the Revised Statutes (30 U. S. C. sec. 39).

c. Issue mineral survey orders and approve plats and field notes of mineral

NOTICES

HOUSING AND HOME FINANCE AGENCY

Federal Housing Administration

FIELD ORGANIZATION

MISCELLANEOUS AMENDMENTS

The following entries in section 22 (b) (5) are amended as indicated:

Opposite "Mobile, Alabama" delete the address "Federal Bldg." and in lieu thereof insert "58 St. Joseph Street."

Opposite "Phoenix, Arizona" delete the address "140 South Central Ave." and in lieu thereof insert "215 East McDowell Road."

Opposite "Louisville, Kentucky" delete the address "Hoffman Bldg., 139 So. 4th St." and in lieu thereof insert "Madrid Bldg., Third and Guthrie Streets."

Opposite "Grand Rapids, Michigan" delete the address "516-518 McKay Tower, 146-156 Monroe Ave. NW." and in lieu thereof insert "B & G Terminal Bldg., 900 Monroe Ave. NW."

Opposite "Reno, Nevada" delete the address "Lunsford Bldg." and in lieu thereof insert "30 Mary Street."

Opposite "New Mexico" under the column headed "Jurisdiction" delete "and Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Presidio and Reeves in Texas."

Opposite "New York City, New York" delete the address "John Wanamaker

Bldg., 70 East 10th Street" and in lieu thereof insert "4th Floor, 655 Madison Avenue."

Opposite "Portland, Oregon" delete the address "7th Floor, Lincoln Bldg., 208 SW. Fifth Avenue" and in lieu thereof insert "827 NE. Oregon Street."

Opposite "El Paso, Texas" under the column headed "Jurisdiction" revise the wording to read: "(See Lubbock) Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Presidio and Reeves."

Opposite "Burlington, Vermont" delete the address "Union Station" and in lieu thereof insert "90 Main Street."

W. HERBERT WELCH,
Director,
Public Information.

[F. R. Doc. 54-9785; Filed, Dec. 10, 1954;
8:47 a. m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Dept. Order 181-3]

OFFICE OF PRODUCTION AND DEFENSE LENDING AND DEFENSE LENDING DIVISION

ESTABLISHMENT OF OFFICES AND TRANSFER OF FUNCTIONS PERTAINING TO PRODUCTION, LENDING AND LIQUIDATION

1. There are established the Office of Production and Defense Lending and the

surveys and certification of expenditures pursuant to 43 CFR 28.3.

The Office Cadastral Engineers (mineral) within the area may issue mineral survey orders and approve plats and field notes of mineral surveys and certification of expenditures pursuant to 43 CFR 280.3.

W. B. WALLACE,
Area Administrator.

Approved: December 7, 1954.

EDWARD WOOZLEY,
Director, Bureau of Land
Management.

[F. R. Doc. 54-9776; Filed, Dec. 10, 1954;
8:45 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Change List 9]

CUBAN RADIO STATIONS

NEW STATIONS, CHANGES, MODIFICATION,
AND DELETIONS

OCTOBER 28, 1954.

Notification of new Cuban radio stations, and of changes, modification and deletions of existing stations, in accordance with Part III, section F, of the North American Regional Broadcasting Agreement, Washington, D. C., 1950.

REPUBLIC OF CUBA

Call letters	Location	Power (kw)	Antenna	Schedule	Class	Proposed date of change or commencement of operation
CMCA.....	Habana, Cuba (Vide: 1150 kc).....	750 kilocycles 10	DA-1	U	II	Cancel.
CMBK.....	Habana, Cuba (PO: 890 kc—Assignment of call letters).....	0.25	ND	U	II	Immediately.
CMBK.....	Habana, Cuba (Vide: 730 kc).....	890 kilocycles 0.25	ND	U	II	Cancel.
CMCQ.....	Habana, Cuba (PO: 1150 kc).....	0.25	ND	U	II	Immediately.
CMCQ.....	Habana, Cuba (Vide: 890 kc).....	1150 kilocycles 0.25	ND	U	III	Cancel.
CMCA.....	Habana, Cuba (PO: 730 kc).....	10	DA-1	U	II-E	Immediately.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS,
Secretary.

[F. R. Doc. 54-9819; Filed, Dec. 10, 1954; 8:54 a. m.]

CIVIL AERONAUTICS BOARD

[Docket 5940]

WESTERN AIR LINES, INC.

NOTICE OF PREHEARING CONFERENCE

In the matter of the application of Western Air Lines, Inc., under section 401 of the Civil Aeronautics Act, as amended, for amendment of its certificates of public convenience and necessity for Routes 13 and 35 so as to eliminate therefrom the intermediate points Richfield, and St. George, Utah, and Chadron, Nebraska.

A prehearing conference in the above-entitled matter is assigned to be held on January 11, 1955, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Curtis C. Henderson.

Dated at Washington, D. C., December 8, 1954.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 54-9815; Filed, Dec. 10, 1954;
8:53 a. m.]

[Docket 5993]

R. E. MCKAUGHAN AND TRANS-TEXAS AIRWAYS; CONTROL AND INTERLOCKING RELATIONSHIPS CASE

NOTICE OF RE-ASSIGNMENT OF PLACE OF HEARING

In the matter of the application of R. E. McKaughan and Trans-Texas
No. 240—33

Airways for approval of control and interlocking relationships under sections 403 and 409 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that the hearing in the above-entitled proceeding which is assigned to be held on December 15, 1954, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, is now assigned to be held in Room 2070, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Curtis C. Henderson, Hearing Examiner.

Dated at Washington, D. C., December 7, 1954.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 54-9816; Filed, Dec. 10, 1954;
8:54 a. m.]

[Docket No. 6908]

GREAT LAKES AIRLINES, INC., ET AL.,
SKYCOACH ENFORCEMENT CASE

NOTICE OF HEARING

In the matter of Great Lakes Airlines, Inc.; Currey Air Transport, Limited; Irving E. Hermann and Ida Mae Hermann individually and as co-partners d/b/a Nevada Aero Trades Company; Air International, Inc.; Great Lakes Airlines Agency, Inc.; Skycoach Agency of Nevada, Inc.; Skycoach Airlines Agency of New York, Inc.; Skycoach Airlines

Agency of Chicago, Inc.; Skycoach Agency of Los Angeles, Inc.; Skycoach Airlines Agency of Newark, Inc.; Super Skycoach Airlines Agency, Inc.; Skycoach Airlines Agency of Boston, Inc.; Skycoach Airlines Agency of Virginia, Inc.; Skycoach Airlines Agency of Milwaukee, Inc.; Skycoach Airlines Agency of Detroit, Inc.; Skycoach Airlines Agency of Washington, Inc.; and Skycoach Agency of San Francisco, Inc., Enforcement Proceeding.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that a hearing in the above-entitled proceeding is assigned to be held January 10, 1955, at 10:00 a. m., e. s. t., in Room 2070, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner F. Merritt Ruhlen.

Dated at Washington, D. C., December 8, 1954.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 54-9814; Filed, Dec. 10, 1954;
8:53 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-1116, G-1152, G-1240, G-1317, G-1344, G-1379, G-1415, G-1417, G-1457, G-1509, G-1616, G-1625, G-1659, G-1725, G-1754, G-2101, G-2234]

PANHANDLE EASTERN PIPE LINE CO. ET AL.

ORDER OVERRULING RULING OF PRESIDING EXAMINER SUSTAINING OBJECTIONS AND FIXING DATE OF HEARING

In the matters of Panhandle Eastern Pipe Line Company, Docket Nos. G-1116, G-1240, G-1317, G-1344, G-1417, G-1725, G-1754, G-2101; City of Port Huron, City of Marysville, City of St. Clair, Michigan Municipal corporations, Docket No. G-1152; Southeastern Michigan Gas Company, Docket No. G-1415; Michigan Consolidated Gas Company, complainant v. Panhandle Eastern Pipe Line Company, defendant, Docket No. G-1379; Northern Indiana Fuel and Light Company, Docket Nos. G-1457, G-2234; Missouri Central Natural Gas Company, Docket No. G-1509; The Central West Utility Company, Docket No. G-1616; Michigan Gas Utilities Company, Docket No. G-1625; City of Auburn, Illinois, Docket No. G-1659.

Panhandle Eastern Pipe Line Company (Panhandle), on November 18, 1954, appealed to the Commission from a ruling of the Presiding Examiner, sustaining the objections of Staff Counsel with respect to the introduction of evidence by Panhandle purporting to show Panhandle's cost of service for the refund period from February 20, 1952, through April 30, 1954, on the basis of a rate of return of 6 percent per annum and 6.5 percent per annum.

Pending our decision on the appeal, the Presiding Examiner recessed the hearings in this matter subject to our further order.

Upon full consideration of the matter involved in the appeal, we conclude that the Presiding Examiner incorrectly sustained the objections of Staff Counsel.

The Commission orders:

(A) The ruling of the Presiding Examiner sustaining the objections of Staff Counsel be and the same is hereby overruled.

(B) The hearings in this proceeding be reconvened on December 13, 1954, at 10:00 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C.

Adopted: December 2, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9783; Filed, Dec. 10, 1954;
8:47 a. m.]

[Docket Nos. G-2681, G-4116]

B. M. BRITAIN AND C. E. WEYMOUTH

NOTICE OF APPLICATION AND ORDER CONSOLIDATING PROCEEDINGS AND FIXING DATE OF HEARING

Take notice that B. M. Britain and C. E. Weymouth (Applicant), independent producers with their principal office in Amarillo, Texas, filed on September 4 and October 4, 1954, respective joint applications in the above entitled Dockets for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing Applicant to make sales of natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in its application filed herein.

Applicant produces natural gas in the West Panhandle Field, Moore and Potter Counties, Texas, which it sells to Panhandle Eastern Pipe Line Company and Colorado Interstate Gas Company for resale in interstate commerce.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 27th day of December 1954. The application is on file with the Commission for public inspection.

These matters should be disposed of as promptly as possible under the applicable rules and regulations. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure.

The Commission finds: It is appropriate and in the public interest to (a) consolidate the above-entitled proceedings for the purpose of hearing and (b) to publish simultaneously the notice of applications and order consolidating and fixing date of hearing.

The Commission orders: Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, Docket Nos. G-2681 and G-4116 be and the same are hereby consolidated for the purpose of hearing, and that a

hearing be held on January 5, 1955, at 9:30 a. m., e. s. t., in a Hearing Room, of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by such applications: *Provided, however*, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Adopted: December 1, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9777; Filed, Dec. 10, 1954;
8:45 a. m.]

[Docket No. G-2728]

RUTH A. MCBURNEY, ATTORNEY IN FACT

NOTICE OF APPLICATION AND ORDER FIXING DATE OF HEARING

Ruth A. McBurney, Attorney in Fact (Applicant), an independent producer with her principal place of business in Pittsburgh, Pennsylvania, filed an application on September 10, 1954, for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing Applicant to sell natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application.

Applicant produces natural gas in the Clay District, Ritchie County, West Virginia, which it sells to Equitable Gas Company for resale in interstate commerce.

Applicant has requested that its application be heard under the shortened procedure provided by § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure.

The Commission finds:

(1) It is appropriate, reasonable, and in the public interest in carrying out the provisions of the Natural Gas Act, and good cause exists, to give due notice of the application filed herein, including publication in the FEDERAL REGISTER, and to hold a public hearing in the above-entitled proceeding, all as hereinafter provided and ordered.

(2) This proceeding is a proper one for disposition under the provisions of § 1.32 (b) of the Commission's rules of practice and procedure (18 CFR 1.32 (b)). Applicant having requested that its application be heard under the shortened procedure provided for by the aforesaid rule for noncontested proceedings: *Provided, however*, That no request to be heard, protest or petition is filed raising an issue of substance.

The Commission orders:

(A) Due notice be given, including publication in the FEDERAL REGISTER, of this notice of application and order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7, 15 and 16 of the

Natural Gas Act, and the Commission's general rules and regulations, including rules of practice and procedure (18 CFR Chapter I), a hearing be held on January 5, 1955, at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application: *Provided, however*, That the Commission may, after a noncontested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure (18 CFR 1.32 (b)).

(C) Protests or petitions to intervene may be filed with the Commission in accordance with §§ 1.8 and 1.10 of its rules of practice and procedure (18 CFR 1.8 and 1.10), on or before December 27, 1954.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Adopted: December 1, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9778; Filed, Dec. 10, 1954;
8:46 a. m.]

[Docket No. G-2732]

CAULLEY GAS CO.

NOTICE OF APPLICATION AND ORDER FIXING DATE OF HEARING

Take notice that Caulley Gas Company (Applicant), a partnership with its principal office in Pennsboro, West Virginia, filed an application on September 13, 1954, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing Applicant to make sales of natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in its application filed herein.

Applicant produces natural gas in Ritchie County, West Virginia, which it sells to Equitable Gas Company for resale in interstate commerce.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10), on or before the 27th day of December 1954. The application is on file with the Commission for public inspection.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure.

The Commission finds: It is proper and consistent with the public interest that notice of the application and order fixing date of hearing be published simultaneously.

The Commission orders: Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on January 5, 1955, at 9:50 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.*

Adopted: December 1, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9779; Filed, Dec. 10, 1954;
8:46 a. m.]

[Docket No. G-2759]

KERR-McGEE OIL INDUSTRIES, INC.

NOTICE OF APPLICATION AND ORDER FIXING
DATE OF HEARING

Take notice that Kerr-McGee Oil Industries, Inc., (Applicant), a Delaware corporation with its principal office in Oklahoma City, Oklahoma, filed on September 14, 1954, application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing Applicant to make sales of natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in its application filed herein.

Applicant produces natural gas in the Carthage Field, Panola County, Texas, from which it sells residue gas at the tailgate of the Carthage Gasoline Plant to Texas Gas Transmission Corporation for resale in interstate commerce.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 29th day of December 1954. The application is on file with the Commission for public inspection.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure.

The Commission finds: It is proper and consistent with the public interest that notice of the application and order fixing date of hearing be published simultaneously.

The Commission orders: Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and pro-

cedure, a hearing be held on January 7, 1955, at 9:40 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.*

Adopted: December 1, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9780; Filed, Dec. 10, 1954;
8:46 a. m.]

[Docket No. G-3763]

MAPLE GAS CO.

NOTICE OF APPLICATION AND ORDER FIXING
DATE OF HEARING

Take notice that Maple Gas Company (Applicant), an independent producer with its principal place of business in Kane, Pennsylvania, filed an application on September 30, 1954, for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing Applicant to sell natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application.

Applicant produces natural gas in Jenks Township, Forest County, Pennsylvania, which it sells to Pennsylvania Gas Company for resale in interstate commerce.

Applicant has requested that its application be heard under the shortened procedure provided by § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure.

The Commission finds:

(1) It is appropriate, reasonable, and in the public interest in carrying out the provisions of the Natural Gas Act, and good cause exists, to give due notice of the application filed herein, including publication in the FEDERAL REGISTER, and to hold a public hearing in the above-entitled proceeding, all as hereinafter provided and ordered.

(2) This proceeding is a proper one for disposition under the provisions of § 1.32 (b) of the Commission's rules of practice and procedure (18 CFR 1.32 (b)). Applicant having requested that its application be heard under the shortened procedure provided for by the aforesaid rule for noncontested proceedings: *Provided, however, That no request to be heard, protest or petition is filed raising an issue of substance.*

The Commission orders:

(A) Due notice be given, including publication in the FEDERAL REGISTER, of this notice of application and order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7, 15 and 16 of the

Natural Gas Act, and the Commission's general rules and regulations, including rules of practice and procedure (18 CFR Chapter I), a hearing be held on January 7, 1955, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application: *Provided, however, That the Commission may, after a noncontested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure (18 CFR 1.32 (b)).*

(C) Protests or petitions to intervene may be filed with the Commission in accordance with §§ 1.8 and 1.10 of its rules of practice and procedure (18 CFR 1.8 and 1.10), on or before December 27, 1954.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Adopted: December 1, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9781; Filed, Dec. 10, 1954;
8:46 a. m.]

[Docket No. G-4262]

TENNESSEE GAS TRANSMISSION CO.

NOTICE OF APPLICATION AND ORDER FIXING
DATE OF HEARING

Take notice that Tennessee Gas Transmission Company (Applicant), on October 27, 1954, filed application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing it to increase natural gas deliveries in its contracts with the following existing customers in the amounts indicated:

Customer	Increase requested	
	Contract quantity	Average day
(Mcf at 15.025)		
Alabama Tennessee Natural Gas Co.	8,831	2,382
Batesville, Miss. (town of)	200	50
Concord Natural Gas Corp.	331	149
Dickson, Tenn. (town of)	400	100
Greenwich Gas Co.	453	263
New Albany and Pontotoc, Miss. (cities of)	665	209
Portland, Tenn. (city of)	150	38
Ripley, Booneville, and Baldwin, Miss. (cities of)	1,178	412
Tennessee Natural Gas Lines, Inc.	11,433	3,430
Western Kentucky Gas Co.	2,410	844
City of Westfield Gas & Electric Light Department	341	153
Total	26,412	8,030

The increases requested are stated to represent the additional gas requirements of the listed customers for the 1954-1955 winter, indicating that this matter should be disposed of as promptly

as possible under the applicable rules and regulations.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 16th day of December 1954. Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure. The application is on file with the Commission for public inspection.

The Commission finds: It is proper and consistent with the public interest that notice of application and order fixing date of hearing should be published simultaneously.

The Commission orders: Pursuant to the authority in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on December 20, 1954, at 9:30 a. m., e. s. t. in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application herein: *Provided, however*, that the Commission may, after a non-

contested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

Adopted: December 1, 1954.

Issued: December 6, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9782; Filed, Dec. 10, 1954;
8:46 a. m.]

[Docket No. G-5642]

KERR-McGEE OIL INDUSTRIES, INC.

ORDERS SUSPENDING PROPOSED CHANGES IN RATES

Kerr-McGee Oil Industries, Inc., on November 5, 1954, tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings which are proposed to become effective on the dates shown:

Description	Purchaser	Rate schedule designation	Effective date ¹
Supplemental agreement, dated June 24, 1954.	Phillips Petroleum Co.	Supplement No. 8 to FPC gas rate schedule No. 8.	Dec. 5, 1954
Notice of change, dated Nov. 2, 1954.	do.....	Supplement No. 1 to Supplement No. 8 to FPC gas rate schedule No. 8.	Do.
Supplemental agreement, dated June 24, 1954.	do.....	Supplement No. 4 to FPC gas rate schedule No. 9.	Do.
Notice of change, dated Nov. 2, 1954.	do.....	Supplement No. 1 to Supplement No. 4 to FPC gas rate schedule No. 9.	Do.
Supplemental agreement, dated June 24, 1954.	do.....	Supplement No. 5 to FPC gas rate schedule No. 11.	Do.
Notice of change, dated Nov. 2, 1954.	do.....	Supplement No. 1 to Supplement No. 5 to FPC gas rate schedule No. 11.	Do.

¹ The stated effective date is the first day after expiration of the required 30 days' notice, or the effective date proposed by Respondent if later.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act, a public hearing be held upon a date to be fixed by further order concerning the lawfulness of said proposed changes in rates and charges; and pending such hearing and decision thereon, the above-designated supplements be and they are each hereby suspended and the use thereof deferred until January 1, 1955, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act, subject to further order of the Commission.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR §§ 1.8 and 1.37 (f)) of

the Commission's rules of practice and procedure.

Adopted: December 2, 1954.

Issued: December 3, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-9784; Filed, Dec. 10, 1954;
8:47 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-1664]

UNITED FRUIT CO.

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES, AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 7th day of December 1954.

The San Francisco Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934 and

Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the Common Stock, No Par Value, of United Fruit Company, a security listed and registered on the New York and Boston Stock Exchange. Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Washington, D. C.

Notice is hereby given that, upon request of any interested person received prior to December 28, 1954, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 54-9790; Filed, Dec. 10, 1954;
8:49 a. m.]

[File Nos. 54-196, 59-97, 70-2681, 70-3156]

MISSION OIL CO. ET AL.

NOTICE OF FILING OF APPLICATION FOR FURTHER EXTENSION OF TIME FOR DISPOSITION OF COMMON STOCK OF SUBSIDIARY

DECEMBER 7, 1954.

In the matter of the Mission Oil Company, Southwestern Development Company and Subsidiaries and Sinclair Oil Corporation, File Nos. 54-196, 59-97; Albert R. Jones, et al., File No. 70-2681; Southwestern Development Company, Amarillo Gas Company, Amarillo Oil Company, Clayton Gas Company, Dahlhart Gas Company, Red River Gas Company, West Texas Gas Company, File No. 70-3156.

Notice is hereby given that Sinclair Oil Corporation ("Sinclair"), a registered holding company, which is exempt from the provisions of the Public Utility Holding Company Act of 1935 ("act"), other than sections 9 (a) (2) and 11 (b), (c) and (e) thereof, has filed with this Commission, pursuant to said act, an application requesting that the Commission extend for a further period of six months from December 21, 1954, the time within which to effect a disposition of its holdings of the common stock of Westpan Hydrocarbon Company ("Westpan"), which disposition was provided for in a plan approved by the Commission, pursuant to section 11 (e) of the act, by order dated December 21, 1951 (Holding Company Act Release No.

10989), as modified and supplemented by the Commission's order of December 24, 1953 (Holding Company Act Release No. 12277).

The plan provided, among other things, for the disposition by Sinclair, within one year from December 21, 1951, "or such longer time as the Commission may by further order grant," of the common stock of Westpan, a non-utility subsidiary of Southwestern Development Company, a registered holding company, received by Sinclair under the provisions of the plan.

The Commission, by orders dated December 24, 1952, July 1, 1953, January 22, 1954, and June 24, 1954 (Holding Company Act Release Nos. 11640, 12030, 12319 and 12562), extended the time within which Sinclair might dispose of the common stock of Westpan to December 21, 1954.

In support of its application for a further extension of time, Sinclair states that it has been unable in the exercise of due diligence to dispose of the common stock of Westpan. It is further stated that if Sinclair shall not have received an acceptable offer for the Westpan stock on or prior to March 31, 1955, it is its intention to request, on or about April 1, 1955, all persons who appear to be interested in purchasing such stock to submit an offer not later than April 15, 1955.

Notice is further given that any interested person may, not later than December 20, 1954, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest and the issues of fact or law, if any, raised by said filing which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after December 20, 1954, such application may be granted.

By the Commission.

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 54-9791; Filed, Dec. 10, 1954;
8:49 a. m.]

[File No. 70-3314]

NEW ORLEANS PUBLIC SERVICE, INC.

ORDER REGARDING ISSUE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING DECEMBER 7, 1954.

New Orleans Public Service Inc. ("New Orleans"), a public-utility subsidiary company of Middle South Utilities, Inc., a registered holding company, having filed an application pursuant to the third sentence of section 6 (b) of the public Utility Holding Company Act of 1935 ("act") and Rule U-50 promulgated thereunder regarding certain proposed transactions, which are summarized as follows:

New Orleans, a Louisiana corporation, proposes to issue and sell, pursuant to the competitive bidding requirements of

Rule U-50, \$6,000,000 principal amount of its First Mortgage Bonds, -- Percent Series due 1984. Said bonds are to be issued under New Orleans' Mortgage and Deed of Trust, dated as of July 1, 1944, in favor of the Chase National Bank of the City of New York and Carl E. Buckley, as Trustees, as heretofore supplemented and as it will be supplemented by a Third Supplemental Indenture to be dated as of December 1, 1954. The interest rate (which shall be a multiple of $\frac{1}{8}$ of 1 percent) to be borne by the bonds and the price to be paid to New Orleans for the bonds (which price shall be not less than the principal amount thereof and not more than 102 $\frac{1}{4}$ percent of such principal amount) are to be fixed by competitive bidding.

The application states that the net proceeds to be received by New Orleans from the sale of the bonds will be applied toward the cost of constructing additions and betterments to its properties.

It is further stated that the issue and sale of the bonds have been expressly authorized by the Council of the City of New Orleans, a State commission, as defined in the act, of the State in which the applicant is organized and doing business.

The application requests that the Commission's order herein become effective forthwith upon the issuance thereof.

Fees and expenses of the applicant in connection with the proposed transactions are estimated as follows:

Federal stamp tax	\$6,600.00
Filing fee, Securities and Exchange Commission	616.50
Charges of trustee	6,000.00
Fees of Company's counsel:	
Rosen, Kammer, Hopkins, Burke & Lapeyre	2,000.00
Jones, Walker & Waechter	2,000.00
Reid & Priest	7,500.00
Fee of Haskins & Sells	3,500.00
Charges of Ebasco Services, Inc.	5,000.00
Printing, including Form S-9, prospectus, supplemental indenture, etc.	14,000.00
Printing and engraving securities	7,000.00
Miscellaneous, including mortgage recording fees	5,783.50
Total	60,000.00

It further appears that the fee of Beekman & Bogue, as counsel for the successful bidders, is estimated at \$6,000, to be paid by such bidders.

Due notice of the filing of said application having been given in the manner prescribed by Rule U-23, and a hearing not having been requested or ordered by the Commission; the Commission finding that the applicable provisions of the act and rules promulgated thereunder are satisfied, and that the fees and expenses as estimated are not unreasonable; and the Commission deeming it appropriate in the public interest and the interest of investors and consumers that said application, as amended, be granted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application, as amended, be and it hereby is granted to become effective forthwith, subject to the terms and

conditions prescribed in Rules U-23 and U-50.

By the Commission,

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 54-9788; Filed, Dec. 10, 1954;
8:48 a. m.]

[File No. 70-3321]

ELECTRIC BOND AND SHARE CO.

NOTICE OF FILING PURSUANT TO RULE AUTHORIZING SALE BY PARENT OF SECURITIES OF SUBSIDIARY

DECEMBER 7, 1954.

Notice is hereby given that Electric Bond and Share Company ("Bond and Share"), a registered holding company, has filed an application-declaration pursuant to sections 9, 10 and 12 (d) of the Public Utility Holding Company Act of 1935 ("act") and Rules U-44 (a) and U-50 promulgated thereunder with respect to the following proposed transactions:

Bond and Share heretofore filed with the Commission its Final Comprehensive Plan as finally amended July 7, 1953 (the "Plan"), under section 11 (e) of the act. The Plan was approved by orders of the Commission dated February 20, 1953, and July 15, 1953, and by order of the United States District Court for the Southern District of New York dated July 16, 1953.

The Plan proposed, among other things, that Bond and Share would dispose of certain of its holdings of common stock of United Gas Corporation ("United Gas") by capital distribution, dividend distributions and rights offerings to the Bond and Share stockholders. Provision was also made that the remainder of the shares of United Gas stock to be disposed of under the Plan should be disposed of by Bond and Share in such manner and on such terms as it deemed appropriate within two years after the effective date of the Plan which was July 16, 1953. Bond and Share now effectively owns 1,445,040 shares of United Gas common stock (being approximately 11.2 percent of the outstanding shares of such stock).

Bond and Share now proposes to sell, pursuant to the competitive bidding requirements of Rule U-50, 170,000 shares of its present holdings of United Gas common stock plus such additional shares not exceeding 25,500 as Bond and Share may acquire during the course of stabilizing operations effected by the applicant-declarant in connection with the proposed sale.

The applicant-declarant requests permission from the Commission to purchase not more than 25,500 shares of United Gas common stock for the purpose of stabilizing the market for that stock on the New York Stock Exchange. The applicant-declarant contemplates that such stabilizing purchases may commence immediately upon the issuance of the order of the Commission relating to this application-declaration and that such purchases will be effected at a price (exclusive of commission) not in excess of the last preceding sale price

of the United Gas common stock on the New York Stock Exchange. The applicant-declarant further contemplates that such stabilizing purchases may continue up to the receipt by the applicant-declarant of bids for the shares of United Gas common stock herein proposed to be sold. As above indicated all shares of such stock purchased for stabilizing purposes will be sold by the applicant-declarant together with the 170,000 shares of United Gas stock proposed to be sold as herein provided.

Notice is further given that any interested person may, not later than December 22, 1954, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issues of fact or law raised by said application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after December 22, 1954, said application-declaration as filed, or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transaction as provided in Rules U-20 (a) and U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 54-9789; Filed, Dec. 10, 1954;
8:48 a. m.]

[File No. 70-3322]

NORTH AMERICAN CO.

NOTICE OF FILING REGARDING CAPITAL CONTRIBUTION BY REGISTERED HOLDING COMPANY TO NON-UTILITY SUBSIDIARY

DECEMBER 7, 1954.

Notice is hereby given that The North American Company ("North American"), a registered holding company, has filed a declaration with this Commission pursuant to the provisions of the Public Utility Holding Company Act of 1935 ("act") and the rules and regulations promulgated thereunder. Declarant has designated section 12 (f) and Rule U-45 thereunder as applicable to such declaration.

All interested persons are referred to said declaration which is on file in the offices of the Commission for a statement of the transaction proposed therein, which is summarized as follows:

North American proposes to make a cash capital contribution in the amount of \$1,000,000 to Hevi Duty Electric Company ("Hevi Duty"), a non-utility subsidiary of North American. The filing states that the purpose of such capital contribution is to enable Hevi Duty to pay its bank loans amounting to \$750,000 which mature on April 1, 1955, and to meet Hevi Duty's requirements for additional working capital.

The fees and expenses to be paid in connection with the proposed transaction are estimated by North American as follows:

Legal fees: Sullivan & Cromwell.....	\$350
Miscellaneous expenses.....	35
Total	385

The filing states that no State commission and no Federal regulatory agency, other than this Commission, has jurisdiction over the proposed transaction.

North American requests that the Commission's order in this matter be issued not later than 30 days from the filing of the said declaration and requests that such order become effective upon issuance.

Notice is further given that any interested person may, on or before December 20, 1954, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reason or reasons for such request, and the issues of fact or law, if any, raised by said declaration which he proposes to controvert, or he may request to be notified if the Commission should order a hearing thereon. Any such request shall bear the caption of the notice and shall be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after December 20, 1954, said declaration, as filed or as it may hereafter be amended, may be permitted to become effective pursuant to Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 54-9787; Filed, Dec. 10, 1954;
8:48 a. m.]

[File No. 811-627]

DuVAL GROWTH FUND, INC.

NOTICE OF FILING OF APPLICATION FOR ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

DECEMBER 7, 1954.

Notice is hereby given that DuVal Growth Fund, Inc. ("DuVal"), a registered, open-end, diversified investment company, has filed an application pursuant to section 8 (f) of the act for an order declaring that DuVal has ceased to be an investment company under the act.

DuVal filed a notification of registration under the act on July 31, 1953. It is stated, however, that at no time has it engaged in any transactions with the public as an investment company.

The application states that effective August 12, 1954, pursuant to stockholders' votes, as required by the laws of Maryland, DuVal and Women's Income Fund, Inc. ("WIFI"), both organized under the corporation law of Maryland,

entered into a merger agreement pursuant to which WIFI is the surviving corporation.

The only shares of WIFI issued and outstanding are those issued pursuant to the merger agreement in exchange for, on a share for share basis, the issued and outstanding shares of common stock of DuVal, its only outstanding security.

It is also stated that WIFI is incorporated as an open-end, diversified investment company, that it has not as yet engaged in any business, and that it intends to file as an investment company pursuant to the act.

Section 8 (f) of the act provides, in part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and that upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than December 27, 1954, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 54-9792; Filed, Dec. 10, 1954;
8:49 a. m.]

[File No. 812-901]

CRUM & FORSTER SECURITIES CORP.

NOTICE OF FILING REQUESTING ORDER EXEMPTING TRANSACTION BETWEEN AFFILIATED PERSONS

DECEMBER 7, 1954.

Notice is hereby given that Crum & Forster Securities Corporation ("Applicant"), a registered closed-end, non-diversified investment company, has filed an application pursuant to the provisions of section 17 (b) of the Investment Company Act of 1940 (the "act") for exemption from the provisions of section 17 (a) (2) thereof in respect of the transactions described below.

Crum & Forster ("C & F"), a New York corporation, whose principal business is that of underwriting manager of insurance companies, is an affiliate of Applicant owning 13.46 percent of the 7 percent Preferred Stock, 100 percent of the Common Class A voting stock, and 85.30 percent of the Common Class B nonvoting stock, respectively, of Applicant's issued and outstanding capital stocks.

Applicant owns 169,635 shares (21.2 percent of 800,000 shares outstanding) of

the capital stock of the North River Insurance Company ("North River"), 244,025 shares (24.40 percent of 1,000,000 shares outstanding) of the capital stock of the United States Fire Insurance Company ("United States Fire"), and 193,336 shares (19.33 percent of 1,000,000 shares outstanding) of the capital stock of Westchester Fire Insurance Company ("Westchester"). C & F is the underwriting manager of, and holds 279,840 shares (34.98 percent), 428,400 shares (42.84 percent) and 206,200 shares (20.62 percent) of the capital stocks, respectively, of North River, United States Fire and Westchester.

Applicant proposes to redeem all its outstanding preferred stock (21,889 shares) which redemption will require cash in the amount of \$2,407,790 (\$110 per share). Applicant has offered in writing to sell to C & F, subject to issuance by this Commission of the exemption order requested, at the mean between their respective closing bid and asked prices on December 6, 1954, a proportionate number of shares of the capital stock of North River, United States Fire and Westchester, respectively, held on said date by Applicant, such proportionate number to be the nearest number of whole shares determined by multiplying the total number of shares of each of the said stocks held by the percentage that \$2,408,000 is of the total value, computed as stated above, of all of the shares of the said stocks held on said date. Such offer was accepted by C & F on November 26, 1954.

Section 17 (a) (2) of the act prohibits, among other things, an affiliated person of a registered investment company or an affiliated person of such a person, from purchasing any security from such registered company, subject to certain exceptions not here material, unless the Commission, upon application pursuant to section 17 (b) of the act, grants an exemption from the provisions of section 17 (a). Under the terms of section 17 (b) an exemption shall be granted by the Commission if evidence establishes: That the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the act; and that the proposed transaction is consistent with the general purposes of the act. Applicant has requested that the Commission issue an order exempting the transaction from the provisions of section 17 (a) (2) to the extent applicable, pursuant to an order under section 17 (b) of the act.

Notice is further given that any interested person may not later than December 22, 1954, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be

notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL]

ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 54-9786; Filed, Dec. 10, 1954;
8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 29992]

ELECTRODES FROM FOSTORIA, OHIO TO
ASHEBORO, N. C.

APPLICATION FOR RELIEF

DECEMBER 7, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: H. R. Hinsch, Agent, for carriers parties to his tariff I. C. C. No. 4510, pursuant to fourth-section order No. 17220.

Commodities involved: Electrodes, dry, battery, carbon, carloads.

From: Fostoria, Ohio.

To: Asheboro, N. C.

Grounds for relief: Competition with rail carriers, and circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL]

GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9750; Filed, Dec. 9, 1954;
8:46 a. m.]

[4th Sec. Application 29993]

VARIOUS COMMODITIES BETWEEN CERTAIN
POINTS

APPLICATION FOR RELIEF

DECEMBER 7, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul

provision of section 4 (1) of the Interstate Commerce Act.

Filed by: W. J. Prueter, Agent, for carriers parties to his tariffs I. C. C. Nos. A-4038, A-3991, A-3910, A-3790, A-3883, A-3600 and A-4060, pursuant to fourth-section order No. 17220.

Commodities involved: Various commodities.

Between points in W. T. L. territory and points in Illinois territory and from points in W. T. L. territory to the South.

Grounds for relief: Competition with rail carriers, and circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL]

GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9751; Filed, Dec. 9, 1954;
8:46 a. m.]

[4th Sec. Application 29994]

CITRUS FRUIT FROM SOUTH PACIFIC COAST
TERRITORY TO WEST AND SOUTHWEST

APPLICATION FOR RELIEF

DECEMBER 7, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: W. J. Prueter, Agent, for carriers parties to schedule listed below.

Commodities involved: Citrus fruit, carloads.

From: Points in south Pacific Coast territory.

To: Points in Arkansas, Iowa, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

Grounds for relief: Rail competition, circuitry, and to maintain grouping.

Schedules filed containing proposed rates: W. J. Prueter, Agent, I. C. C. No. 1558, supp. 36.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed

to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9752; Filed, Dec. 9, 1954;
8:46 a. m.]

[4th Sec. Application 29995]

POTATOES FROM MAINE AND NEW BRUNSWICK, CANADA TO NORWICH, N. Y., EASTON, PA., AND WHITE RIVER JCT., VT.

APPLICATION FOR RELIEF

DECEMBER 8, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: C. W. Boin and C. R. Goldrich, Agents, for carriers parties to schedule listed below.

Commodities involved: Potatoes, carloads.

From: Points in Maine and New Brunswick, Canada.

To: Norwich, N. Y., Easton, Pa., and White River Jct., VT.

Grounds for relief: Competition with rail carriers, circuitous routes, and additional routes and destinations.

Schedules filed containing proposed rates: C. R. Goldrich, Agent, I. C. C. 611, supp. 22.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9798; Filed, Dec. 10, 1954;
8:50 a. m.]

[4th Sec. Application 29998]

BRICK AND RELATED ARTICLES FROM SIOUX CITY AND SERGEANT BLUFF, IOWA, TO MINNESOTA

APPLICATION FOR RELIEF

DECEMBER 8, 1954.

The Commission is in receipt of the above-entitled and numbered applica-

tion for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: W. J. Prueter, Agent, for carriers parties to schedules listed below.

Commodities involved: Brick and related articles, also drain tile, carloads.

From: Sioux City and Sergeant Bluff, Iowa.

To: Points in Minnesota.

Grounds for relief: Rail competition, circuitry, to apply rates constructed on the basis of the short line distance formula, and additional destinations.

Schedules filed containing proposed rates: Chicago and North Western Railway Company, I. C. C. No. 11256, supp. 17, and other schedules listed on page 1 of the application.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9801; Filed, Dec. 10, 1954;
8:51 a. m.]

[4th Sec. Application 29999]

ACETIC ACID AND ANHYDRIDE FROM TEXAS AND ARKANSAS TO PAULSBORO, N. J.

APPLICATION FOR RELIEF

DECEMBER 8, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedules listed below.

Commodities involved: Acetic acid, glacial or liquid, and acetic anhydride, carloads and tank-car loads.

From: Kings Mill, Bishop, Brownsville, Houston, and Texas City, Tex., and Crossett, Ark.

To: Paulsboro, N. J.

Grounds for relief: Rail competition, circuitry, to apply rates constructed on the basis of the short line distance formula, and additional destination.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 3967, supp. 411; F. C. Kratzmeir, Agent, I. C. C. No. 3908, supp. 215.

Any interested person desiring the Commission to hold a hearing upon such

application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9802; Filed, Dec. 10, 1954;
8:51 a. m.]

[4th Sec. Application 30002]

ALUMINUM BILLETS AND RELATED ARTICLES FROM POINT COMFORT AND GREGORY, TEX., TO RIVERDALE, IOWA

APPLICATION FOR RELIEF

DECEMBER 8, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Aluminum billets, blooms, ingots, pigs and slabs, carloads.

From: Point Comfort and Gregory, Tex.

To: Riverdale, Iowa.

Grounds for relief: Competition with rail carriers, circuitous routes, and market competition.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 3967, supp. 410.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-9805; Filed, Dec. 10, 1954;
8:52 a. m.]